

**BURNS
INDIANA STATUTES
ANNOTATED**




CODE EDITION

TITLE 33

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BURNS INDIANA STATUTES ANNOTATED

CODE EDITION

TITLE 33

1998 REPLACEMENT VOLUME

*Annotations from Northeastern Reporter through
Volume 690, second series*

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HARRISON BURNS

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PREFACE

This 1998 replacement includes acts of the 1998 Regular Session. This volume is conformed to the Indiana Code as enacted by the 1976 Regular Session of the General Assembly, as amended. For the convenience of the user, the complete Code number, indicating title, article, chapter, and section of the Code, appears at the beginning of each section.

This volume contains notes to the following sources:

North Eastern Reporter, 2d Series, through 690 N.E.2d 611.
Supreme Court Reporter, through 118 S. Ct. 650.
Federal Reporter, 3d Series, through 131 F.2d 1025.
Federal Supplement, through 981 F. Supp. 671.
Federal Rules Decisions, through 175 F.R.D. 61.
Bankruptcy Reporter, through 214 Bankr. 937.
Opinions of Attorney General, through 97-1.

The annotations also include references to the Indiana Law Journal, Indiana Law Review, Notre Dame Law Review, Res Gestae, and Valparaiso University Law Review. These and other helpful notes and references have been reviewed, updated, and relocated where necessary. Cross reference notes providing directions to statutory material of similar and/or related subject matter located elsewhere in the Code are provided. Where a law has been repealed, the compiler's notes to that section contain a reference to any new or present provision on a similar subject, where applicable.

If you have questions or suggestions concerning Burns' Statutes, please write, call toll free 1-800-446-3410, fax toll free 1-800-643-1280, visit our website at www.lexislawpublishing.com, or email us at llp.customer.support@lexis-nexis.com. Direct written inquiries to:

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Please note that, for your convenience, there are postpaid cards at the back of each index volume for your suggestions regarding the index.

November 1998

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from Burns' Indiana Statutes Annotated, a User's Guide is included with the set. The Guide contains comments and information on the many features found in the Burns' Statutes volumes, which are intended to increase the usefulness of the set. See the volume containing Titles 1, 2, and 3 for the complete User's Guide.

History of Burns' Statutes Annotated

For one hundred nine years, the Bench and Bar of Indiana have relied on Burns' Indiana Statutes Annotated, published first by The Bobbs-Merrill Company and now by LEXIS Law Publishing, formerly The Michie Company. Bobbs-Merrill first became involved in 1889 with the publication of Elliott's Supplement to the Revised Statutes of 1881 by the Bowen-Merrill Company, a predecessor company. (The Revised Statutes of 1881 are an unenacted compilation sanctioned by the state of Indiana.)

From that time until the publication of the official Indiana Code, Burns' Indiana Statutes Annotated was the sole organized and indexed source of the official statute law of Indiana with the exception of Revised Statutes of Indiana published by E.D. Meyers & Co., Chicago, Illinois in 1896, and Baldwin's 1934 Indiana Statutes published by the Baldwin Law Publishing Company, Cleveland, Ohio.

On November 3, 1892, Harrison Burns of Vincennes, Indiana, entered into an agreement which led to the publication of Burns' Annotated Indiana Statutes in three volumes in 1894. This work followed the organization of the Revised Statutes of 1881 but the sections were all assigned numbers continuously through the three volumes and it was completely annotated and fully indexed. Supplements were published in 1895 and 1897. Additional revisions by Judge Burns were required in 1908 and 1914 and the 1914 revision was supplemented in 1918 and 1921. A complete revision edited by Benjamin F. Watson was published in 1926 and supplemented in 1929.

In 1933, Bobbs-Merrill began publication of a new and improved edition of Burns' Annotated Indiana Statutes in 12 volumes, completely annotated, indexed and edited by the publisher's editorial staff. This edition contained a new section numbering system, provided for annual supplementation of each volume and for individual volume revision to keep the work current and up-to-date at all times. This edition was kept current by supplementation and revision and was the standard reference for Indiana Statutes until it was replaced by the present Burns' Code Edition beginning in 1972. The Burns' Code Edition, also completely annotated and indexed, was necessary to conform to the organization and numbering system of the Indiana Code of 1971 which was carried into the official Indiana Code of 1976.

In 1976, the Law Division of the Bobbs-Merrill Company was acquired by The Michie Company, and for a number of years the Burns' Code was published under the name Michie/Bobbs-Merrill. While there was a continuity of editorial personnel working on Burns' Indiana Statutes Annotated, by 1985 the Burns' Code was published under the name of The Michie Company. In 1995, The Michie Company was merged with Butterworth Legal Publishers to form Michie Butterworth, and the company name became Michie, and then LEXIS Law Publishing. It is the desire and goal of the Publishers to continue to provide an authoritative, useful and convenient edition of Indiana Statutes Annotated.

EFFECTIVE DATES OF ACTS AND STATUTES WITHOUT EFFECTIVE DATE PROVISIONS

Between 1979 and 1987, under IC 1-1-3-3, each act passed at a regular session of the general assembly took effect on September 1 next following its enactment, unless a different time was specified in the act. In 1987, IC 1-1-3-3 was amended to change the date to July 1. Prior to the adoption of IC 1-1-3-3, the effective date of acts which did not contain an emergency clause was the date of the last filing in the counties as shown by the proclamation of the governor under IC 1-1-3-2. The table below lists the effective dates for acts and statutes which did not contain other effective date provisions.

[R. = Regular Session; S. = Special Session]

1842-1843 Revised Statutes	Approved Feb. 11, 1843—no effective date record
1851-1852 Special Acts	November 6, 1852
1851-1852 Revised Statutes	May 6, 1853
1853	July 24, 1853
1855	August 17, 1855
1857	August 24, 1857
1858 S.	August 6, 1859
1859	August 6, 1859
1861	July 5, 1861
1861 S.	September 7, 1861
1863	October 10, 1863
1865	September 2, 1865
1865 S.	April 13, 1866
1867	June 6, 1867
1869 R. and S.	August 16, 1869
1871	July 10, 1871
1872 S.	July 7, 1873
1873	July 7, 1873
1875 R. and S.	August 24, 1875
1877 R. and S.	July 2, 1877
1879 R. and S.	May 31, 1879
1881 R. and S.	September 19, 1881
1883	June 5, 1883
1885 R. and S.	July 18, 1885
1887	May 21, 1887
1889	May 10, 1889
1891	June 3, 1891
1893	May 18, 1893
1895	June 28, 1895
1897	April 14, 1897
1899	April 27, 1899
1901	May 15, 1901
1903	April 23, 1903
1905	April 15, 1905
1907	April 10, 1907
1908 S.	November 20, 1908
1909	April 5, 1909
1911	April 21, 1911
1913	April 30, 1913
1915	April 26, 1915
1917	May 31, 1917
1919	May 15, 1919
1920 S.	January 16, 1920
1920 S.	November 13, 1920
1921	May 31, 1921
1921 S.	December 14, 1921
1923	April 30, 1923

1925	April 25, 1925
1927	May 16, 1927
1929	May 21, 1929
1931	June 30, 1931
1932 S.	September 30, 1932
1933	May 22, 1933
1935	June 10, 1935
1936 S.	May 11, 1936
1937	June 7, 1937
1938 S.	Each act effective on date of approval
1939	June 14, 1939
1941	July 8, 1941
1943	November 3, 1943
1944 (1st S.S.)	April 11, 1944
1944 (2nd S.S.)	November 4, 1944
1945	December 12, 1945
1947	August 21, 1947
1949	September 10, 1949
1951	July 20, 1951
1951 S.	Each act effective on date of approval
1953	September 18, 1953
1955	June 30, 1955
1957	June 25, 1957
1959	July 20, 1959
1961	July 6, 1961
1963 R. and S.	August 12, 1963
1965	July 8, 1965
1965 (1st S.S.)	Each act effective on date of approval
1965 (2nd S.S.)	December 29, 1965
1967	July 26, 1967
1969	August 18, 1969
1971	September 2, 1971
1972	July 28, 1972
1973	July 26, 1973
1974	June 11, 1974
1975	July 29, 1975
1976	June 2, 1976
1977	August 29, 1977
1978	June 28, 1978
1979-1987	September 1
1988 and subsequent years	July 1

TABLE OF CORRESPONDING SECTIONS

The following table lists the former Burns' Statute section numbers which were originally included in this volume and the corresponding Code number under which the section appeared.

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4-802	33-5-10-2	4-1005	33-5-15-3	4-1129	33-5-19-8	4-1608	33-5-20.1-8
4-803	33-5-10-3	4-1006	33-5-18-2	4-1130	33-5-19-9	4-1609	33-5-20.1-9
4-804	33-5-10-4	4-1007	33-5-18-3	4-1201	33-5-22-1	4-1610	33-5-20.1-10
4-805	33-5-10-5	4-1008	33-5-15-4	4-1202	33-5-22-2	4-1611	33-5-20.1-11
4-806	33-5-10-6	4-1009	33-5-13-2	4-1203	33-5-22-3	4-1612	33-5-20.1-12
4-808	33-5-10-7	4-1010	33-5-13-4	4-1205	33-5-22-4	4-1613	33-5-20.1-13
4-809	33-5-10-8	4-1011	33-5-13-5	4-1206	33-5-22-5	4-1614	33-5-20.1-14
4-810	33-5-10-9	4-1012	33-5-13-6	4-1207	33-5-23-6	4-1615	33-5-20.1-15
4-811	33-5-10-10	4-1013	33-5-13-7	4-1301	33-5-23-1	4-1616	33-5-20.1-16

Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein
4-1617	33-5-20.1-17	4-1919	33-5-29.5-19	4-2005	33-5-31-5	4-2152	33-5-34-11
4-1618	33-5-20.1-18	4-1920	33-5-29.5-20	4-2007	33-5-31-6	4-2153	33-5-34-12
4-1619	33-5-20.1-19	4-1921	33-5-29.5-21	4-2008	33-5-31-7	4-2154	33-5-34-13
4-1620	33-5-20.1-20	4-1922	33-5-29.5-22	4-2009	33-5-28-1	4-2155	33-5-34-14
4-1621	33-5-20.1-21	4-1923	33-5-29.5-23	4-2011	33-5-28-3	4-2156	33-5-34-15
4-1622	33-5-20.1-22	4-1924	33-5-29.5-24	4-2012	33-5-28-4	4-2157	33-5-34-16
4-1623	33-5-20.1-23	4-1925	33-5-29.5-25	4-2013	33-5-28-5	4-2158	33-5-34-17
4-1624	33-5-20.1-24	4-1926	33-5-29.5-26	4-2014	33-5-28-6	4-2159	33-5-34-18
4-1625	33-5-20.1-25	4-1927	33-5-29.5-27	4-2015	33-5-28-7	4-2160	33-5-34-19
4-1626	33-5-20.1-26	4-1928	33-5-29.5-28	4-2016	33-5-28-8	4-2161	33-5-34-20
4-1701	33-5-24-1	4-1929	33-5-29.5-29	4-2017	33-5-28-9	4-2162	33-5-34-21
4-1702	33-5-24-2	4-1930	33-5-29.5-30	4-2018	33-5-28-10	4-2163	33-5-34-22
4-1703	33-5-24-3	4-1931	33-5-29.5-31	4-2019	33-5-28-11	4-2164	33-5-34-23
4-1705	33-5-24-4	4-1932	33-5-29.5-32	4-2020	33-5-28-12	4-2165	33-5-34-24
4-1706	33-5-24-5	4-1933	33-5-29.5-33	4-2021	33-5-28-13	4-2166	33-5-34-25
4-1707	33-5-24-6	4-1934	33-5-29.5-34	4-2031	33-5-32-1	4-2201	33-5-35-1
4-1801	33-5-26-1	4-1935	33-5-29.5-35	4-2032	33-5-32-2	4-2202	33-5-3-1
4-1802	33-5-26-2	4-1936	33-5-29.5-36	4-2033	33-5-32-3	4-2203	33-5-35-2
4-1803	33-5-26-3	4-1937	33-5-29.5-37	4-2035	33-5-32-4	4-2204	33-5-35-3
4-1804	33-5-26-4	4-1938	33-5-29.5-38	4-2036	33-5-32-5	4-2205	33-5-35-4
4-1805	33-5-26-5	4-1939	33-5-29.5-39	4-2037	33-5-32-6	4-2206	33-5-35-5
4-1810	33-5-26-6	4-1940	33-5-29.5-40	4-2038	33-5-32-7	4-2211	33-5-35-6
4-1811	33-5-26-7	4-1941	33-5-29.5-41	4-2039	33-5-32-8	4-2212	33-5-35-7
4-1812	33-5-26-8	4-1942	33-5-29.5-42	4-2040	33-5-32-9	4-2213	33-5-35-8
4-1813	33-5-26-9	4-1943	33-5-29.5-43	4-2041	33-5-31-8	4-2214	33-5-35-9
4-1814	33-5-26-10	4-1944	33-5-29.5-44	4-2042	33-5-31-10	4-2215	33-5-35-10
4-1815	33-5-26-11	4-1945	33-5-29.5-45	4-2101	33-5-33-1	4-2216	33-5-35-11
4-1816	33-5-26-12	4-1946	33-5-29.5-46	4-2102	33-5-33-2	4-2319	33-5-36.1-1
4-1817	33-5-26-13	4-1947	33-5-29.5-47	4-2103	33-5-33-3	4-2320	33-5-36.1-2
4-1818	33-5-26-14	4-1948	33-5-29.5-48	4-2104	33-5-33-4	4-2321	33-5-36.1-3
4-1819	33-5-26-15	4-1949	33-5-29.5-49	4-2105	33-5-33-5	4-2322	33-5-36.1-4
4-1820	33-5-26-16	4-1950	33-5-29.5-50	4-2110	33-5-33-6	4-2323	33-5-36.1-5
4-1821	33-5-26-17	4-1951	33-5-29.5-51	4-2110a	33-5-33-7	4-2324	33-5-36.1-6
4-1822	33-5-26-18	4-1952	33-5-29.5-52	4-2111	33-5-33-8	4-2325	33-5-36.1-7
4-1823	33-5-26-19	4-1953	33-5-29.5-53	4-2112	33-5-33-9	4-2326	33-5-36.1-8
4-1824	33-5-26-20	4-1954	33-5-29.5-54	4-2113	33-5-33-10	4-2327	33-5-36.1-9
4-1825	33-5-26-21	4-1955	33-5-29.5-55	4-2114	33-5-33-11	4-2328	33-5-36.1-10
4-1826	33-5-26-22	4-1956	33-5-29.5-56	4-2115	33-5-33-12	4-2329	33-5-36.1-11
4-1901	33-5-29.5-1	4-1957	33-5-29.5-57	4-2116	33-5-33-13	4-2330	33-5-36.1-12
4-1902	33-5-29.5-2	4-1958	33-5-29.5-58	4-2117	33-5-33-14	4-2331	33-5-36.1-13
4-1903	33-5-29.5-3	4-1959	33-5-29.5-59	4-2118	33-5-33-15	4-2332	33-5-36.1-14
4-1904	33-5-29.5-4	4-1960	33-5-29.5-60	4-2119	33-5-33-16	4-2333	33-5-36.1-15
4-1905	33-5-29.5-5	4-1961	33-5-29.5-61	4-2120	33-5-33-17	4-2334	33-5-36.1-16
4-1906	33-5-29.5-6	4-1962	33-5-29.5-62	4-2121	33-5-33-18	4-2335	33-5-36.1-17
4-1907	33-5-29.5-7	4-1963	33-5-29.5-63	4-2122	33-5-33-19	4-2336	33-5-36.1-18
4-1908	33-5-29.5-8	4-1964	33-5-29.5-64	4-2123	33-5-33-20	4-2337	33-5-36.1-19
4-1909	33-5-29.5-9	4-1965	33-5-29.5-65	4-2141	33-5-34-1	4-2338	33-5-36.1-20
4-1910	33-5-29.5-10	4-1966	33-5-29.5-66	4-2142	33-5-34-2	4-2339	33-5-36.1-21
4-1911	33-5-29.5-11	4-1967	33-5-29.5-67	4-2143	33-5-34-3	4-2340	33-5-36.1-22
4-1912	33-5-29.5-12	4-1968	33-5-29.5-68	4-2144	33-5-34-4	4-2341	33-5-36.1-23
4-1913	33-5-29.5-13	4-1969	33-5-29.5-69	4-2145	33-5-34-5	4-2342	33-5-36.1-24
4-1914	33-5-29.5-14	4-1970	33-5-29.5-70	4-2146	33-5-34-6	4-2343	33-5-36.1-25
4-1915	33-5-29.5-15	4-2001	33-5-31-1	4-2148	33-5-34-7	4-2344	33-5-36.1-26
4-1916	33-5-29.5-16	4-2002	33-5-31-2	4-2149	33-5-34-8	4-2401	33-5-37-1
4-1917	33-5-29.5-17	4-2003	33-5-31-3	4-2150	33-5-34-9	4-2402	33-5-37-2
4-1918	33-5-29.5-18	4-2004	33-5-31-4	4-2151	33-5-34-10	4-2403	33-5-37-3

Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein
4-2405	33-5-37-4	4-2627	33-5-40-24	4-2710	33-15-21-1	4-2885	33-5-43-25
4-2406	33-5-37-5	4-2628	33-5-40-25	4-2711	33-15-21-2	4-2886	33-5-43-26
4-2407	33-5-37-6	4-2629	33-5-40-26	4-2712	33-15-21-3	4-2887	33-5-43-27
4-2524	33-5-38-1	4-2630	33-5-40-27	4-2801	33-5-41-1	4-2888	33-5-43-28
4-2525	33-5-38-2	4-2631	33-5-40-28	4-2802	33-5-41-2	4-2889	33-5-43-29
4-2526	33-5-38-3	4-2632	33-5-40-30	4-2803	33-5-41-3	4-2890	33-5-43-30
4-2527	33-5-38-4	4-2633	33-5-40-31	4-2804	33-5-41-4	4-2891	33-5-43-31
4-2528	33-5-38-5	4-2634	33-5-40-33	4-2805	33-5-41-5	4-2892	33-5-43-32
4-2529	33-5-38-6	4-2635	33-5-40-34	4-2810	33-5-41-6	4-2893	33-5-43-33
4-2530	33-5-38-7	4-2636	33-5-40-35	4-2811	33-5-41-7	4-2894	33-5-43.5-1
4-2531	33-5-38-8	4-2637	33-5-40-36	4-2812	33-5-41-8	4-2994a	33-5-43.5-2
4-2532	33-5-38-9	4-2638	33-5-40-37	4-2813	33-5-41-9	4-2995	33-5-43.5-3
4-2533	33-5-38-10	4-2639	33-5-40-38	4-2814	33-5-41-10	4-2995a	33-5-43.5-4
4-2534	33-5-38-11	4-2640	33-5-40-39	4-2815	33-5-41-11	4-2995b	33-5-43.5-5
4-2535	33-5-38-12	4-2641	33-5-40-40	4-2816	33-5-41-12	4-2995c	33-5-43.5-6
4-2536	33-5-38-13	4-2642	33-5-40-41	4-2817	33-5-41-13	4-2995d	33-5-43.5-7
4-2537	33-5-38-14	4-2643	33-5-40-42	4-2818	33-5-41-14	4-2995e	33-5-43.5-8
4-2538	33-5-38-15	4-2644	33-5-40-43	4-2819	33-5-41-15	4-2995f	33-5-43.5-9
4-2539	33-5-38-16	4-2645	33-5-40-44	4-2820	33-5-41-16	4-2995g	33-5-43.5-10
4-2540	33-5-38-17	4-2646	33-5-40-45	4-2821	33-5-41-17	4-2995h	33-5-43.5-11
4-2541	33-5-38-18	4-2647	33-5-40-46	4-2822	33-5-41-18	4-2995i	33-5-43.5-12
4-2542	33-5-38-19	4-2648	33-5-40-47	4-2841	33-5-42-1	4-2995j	33-5-43.5-13
4-2543	33-5-38-20	4-2649	33-5-40-48	4-2842	33-5-42-2	4-2995k	33-5-43.5-14
4-2544	33-5-38-21	4-2650	33-5-40-49	4-2843	33-5-42-3	4-2995l	33-5-43.5-15
4-2545	33-5-38-22	4-2651	33-5-40-50	4-2844	33-5-42-4	4-2995m	33-5-43.5-16
4-2546	33-5-38-23	4-2652	33-5-40-51	4-2845	33-5-42-5	4-2995n	33-5-43.5-17
4-2547	33-5-38-24	4-2653	33-5-40-52	4-2846	33-5-42-6	4-2996	33-5-43.5-18
4-2548	33-5-38-25	4-2654	33-5-40-53	4-2847	33-5-42-7	4-2997	33-5-43.5-19
4-2549	33-5-38-26	4-2655	33-5-40-54	4-2848	33-5-42-8	4-2997a	33-5-43.5-20
4-2550	33-5-38-27	4-2656	33-5-40-55	4-2849	33-5-42-9	4-2997b	33-5-43.5-21
4-2551	33-5-38-28	4-2657	33-5-40-56	4-2850	33-5-42-10	4-2997c	33-5-43.5-22
4-2552	33-5-38-29	4-2658	33-5-40-57	4-2851	33-5-42-11	4-2997d	33-5-43.5-23
4-2553	33-5-38-30	4-2659	33-5-40-58	4-2861	33-5-43-1	4-2997e	33-5-43.5-24
4-2601	33-5-40-1	4-2660	33-5-40-59	4-2862	33-5-43-2	4-2997f	33-5-43.5-25
4-2602	33-5-40-2	4-2661	33-5-40-60	4-2863	33-5-43-3	4-2997g	33-5-43.5-26
4-2603	33-5-40-3	4-2662	33-5-40-61	4-2864	33-5-43-4	4-2997h	33-5-43.5-27
4-2604	33-5-40-4	4-2663	33-5-40-62	4-2865	33-5-43-5	4-2997i	33-5-43.5-28
4-2605	33-5-40-5	4-2664	33-5-40-63	4-2866	33-5-43-6	4-2997j	33-5-43.5-29
4-2606	33-5-40-6	4-2665	33-5-40-64	4-2867	33-5-43-7	4-2997k	33-5-43.5-30
4-2607	33-5-40-7	4-2666	33-5-40-65	4-2868	33-5-43-8	4-2997l	33-5-43.5-31
4-2609	33-5-40-8	4-2667	33-5-40-66	4-2869	33-5-43-9	4-2997m	33-5-43.5-32
4-2610	33-5-40-9	4-2668	33-5-40-67	4-2870	33-5-43-10	4-2997n	33-5-43.5-33
4-2611	33-5-40-10	4-2669	33-5-40-68	4-2871	33-5-43-11	4-2997o	33-5-43.5-34
4-2612	33-5-40-11	4-2670	33-5-40-69	4-2872	33-5-43-12	4-2997p	33-5-43.5-35
4-2613	33-5-40-12	4-2671	33-5-40-70	4-2873	33-5-43-13	4-2997q	33-5-43.5-36
4-2614	33-5-40-13	4-2672	33-5-40-71	4-2874	33-5-43-14	4-2997r	33-5-43.5-37
4-2615	33-5-40-14	4-2673	33-5-40-72	4-2875	33-5-43-15	4-2997s	33-5-43.5-38
4-2616	33-5-40-15	4-2701	33-5-39-1	4-2876	33-5-43-16	4-2997t	33-5-43.5-39
4-2617	33-5-40-16	4-2702	33-5-39-2	4-2877	33-5-43-17	4-2997u	33-5-43.5-40
4-2618	33-5-40-17	4-2702a	33-5-39-3	4-2878	33-5-43-18	4-2997v	33-5-43.5-41
4-2619	33-5-40-18	4-2703	33-5-39-4	4-2879	33-5-43-19	4-2997w	33-5-43.5-42
4-2620	33-5-40-19	4-2704	33-5-39-5	4-2880	33-5-43-20	4-2997x	33-5-43.5-43
4-2621	33-5-40-20	4-2706	33-5-39-6	4-2881	33-5-43-21	4-2999	35-5-43.5-45
4-2624	33-5-40-21	4-2707	33-5-39-7	4-2882	33-5-43-22	4-2999a	33-5-43.5-46
4-2625	33-5-40-22	4-2708	33-5-39-8	4-2883	33-5-43-23	4-3001	33-5-44-1
4-2626	33-5-40-23	4-2709	33-4-6-2	4-2884	33-5-43-24	4-3002	33-5-44-2

Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein
4-3003	33-5-44-3	4-3204	33-5-27-4	4-5101	33-8-1-1	4-5711	33-9-2-1
4-3004	33-5-44-4	4-3205	33-5-27-5	4-5102	33-8-1-2	4-5712	33-9-2-2
4-3005	33-5-44-5	4-3206	33-5-27-6	4-5103	33-8-1-3	4-5713	33-9-4-1
4-3010	33-5-44-6	4-3207	33-5-27-7	4-5104	33-8-1-4	4-5714	33-9-4-2
4-3011	33-5-44-7	4-3208	33-5-27-8	4-5105	33-8-1-5	4-5715	33-9-5-1
4-3012	33-5-44-8	4-3209	33-5-27-9	4-5106	33-8-1-6	4-5716	33-9-6-1
4-3013	33-5-44-9	4-3210	33-5-27-10	4-5108	33-8-1-7	4-5717	33-9-6-2
4-3014	33-5-44-10	4-3211	33-5-27-11	4-5109	33-8-1-8	4-5718	33-9-6-3
4-3015	33-5-44-11	4-3212	33-5-27-12	4-5110	33-8-1-9	4-5724	33-9-9-1
4-3016	33-5-44-12	4-3213	33-5-27-13	4-5111	33-8-1-10	4-5725	33-9-9-2
4-3017	33-5-44-13	4-3214	33-5-27-14	4-5112	33-8-1-11	4-5726	33-9-9-3
4-3018	33-5-44-14	4-3215	33-5-27-15	4-5113	33-8-1-12	4-5727	33-9-9-4
4-3019	33-5-44-15	4-3216	33-5-27-16	4-5114	33-8-1-13	4-5728	33-9-9-5
4-3020	33-5-44-16	4-3217	33-5-27-17	4-5115	33-8-1-14	4-5729	33-9-9-6
4-3021	33-5-44-17	4-3301	33-5-32.5-1	4-5116	33-8-1-15	4-5730	33-9-9-7
4-3022	33-5-44-18	4-3302	33-5-32.5-2	4-5117	33-8-1-16	4-5731	33-9-9-8
4-3031	33-5-45-1	4-3303	33-5-32.5-3	4-5118	33-8-1-17	4-5732	33-9-9-9
4-3032	33-5-45-2	4-3304	33-5-32.5-4	4-5119	33-8-1-18	4-5733	33-9-9-10
4-3033	33-5-45-3	4-3305	33-5-32.5-5	4-5120	33-8-1-19	4-5734	33-9-9-11
4-3034	33-5-45-4	4-3306	33-5-32.5-6	4-5121	33-8-1-20	4-5735	33-9-9-12
4-3035	33-5-45-5	4-3307	33-5-32.5-7	4-5122	33-8-1-21	4-5741	33-9-7-1
4-3040	33-5-45-6	4-3308	33-5-32.5-8	4-5123	33-8-1-22	4-5742	33-9-7-2
4-3041	33-5-45-7	4-3309	33-5-32.5-9	4-5301	33-8-2-1	4-5801	33-6-1-1
4-3042	33-5-45-8	4-3310	33-5-32.5-10	4-5302	33-8-2-2	4-5802	33-6-1-2
4-3043	33-5-45-9	4-3311	33-5-32.5-11	4-5303	33-8-2-3	4-5802a	33-6-1-29.5
4-3044	33-5-45-10	4-3312	33-5-32.5-12	4-5304	33-8-2-4	4-5803	33-6-1-3
4-3045	33-5-45-11	4-3313	33-5-32.5-13	4-5305	33-8-2-5	4-5803a	33-6-1-3.5
4-3046	33-5-45-12	4-3314	33-5-32.5-14	4-5306	33-8-2-6	4-5803b	33-6-1-3.1
4-3047	33-5-45-13	4-3315	33-5-32.5-15	4-5308	33-8-2-7	4-5804	33-6-1-4
4-3048	33-5-45-14	4-3316	33-5-32.5-16	4-5309	33-8-2-8	4-5804a	33-6-1-28
4-3049	33-5-45-15	4-3317	33-5-32.5-17	4-5310	33-8-2-9	4-5804b	33-6-1-29
4-3050	33-5-45-16	4-3318	33-5-32.5-18	4-5311	33-8-2-10	4-5806	33-6-1-5
4-3051	33-5-45-17	4-3319	33-5-32.5-19	4-5312	33-8-2-11	4-5807	33-6-1-6
4-3052	33-5-45-18	4-3320	33-5-32.5-20	4-5313	33-8-2-12	4-5808	33-6-1-7
4-3053	33-5-45-19	4-3321	33-5-32.5-21	4-5314	33-8-2-13	4-5810	33-6-1-8
4-3054	33-5-45-20	4-3322	33-5-32.5-22	4-5315	33-8-2-14	4-5811	33-6-1-9
4-3055	33-5-45-21	4-3323	33-5-32.5-23	4-5316	33-8-2-15	4-5812	33-6-1-10
4-3101	33-5-46-1	4-3324	33-5-32.5-24	4-5317	33-8-2-16	4-5813	33-6-1-11
4-3102	33-5-46-2	4-3325	33-5-32.5-25	4-5318	33-8-2-17	4-5814	33-6-1-12
4-3103	33-5-46-3	4-3401	33-5-35.5-1	4-5319	33-8-2-18	4-5814a	33-6-1-30
4-3105	33-5-46-4	4-3402	33-5-35.5-2	4-5320	33-8-2-19	4-5814b	33-6-1-12.7
4-3106	33-5-46-5	4-3403	33-5-35.5-3	4-5321	33-8-2-20	4-5815	33-13-7-1
4-3107	33-5-46-6	4-3404	33-5-35.5-4	4-5322	33-8-2-21	4-5816	33-6-1-13
4-3121	33-5-47-1	4-3405	33-5-35.5-5	4-5323	33-8-2-22	4-5817	33-6-1-14
4-3122	33-5-47-2	4-3406	33-5-35.5-6	4-5324	33-8-2-23	4-5818	33-6-1-15
4-3123	33-5-47-3	4-3407	33-5-35.5-7	4-5325	33-8-2-24	4-5819	33-6-1-16
4-3124	33-5-47-4	4-3408	33-5-35.5-8	4-5701	33-9-1-1	4-5820	33-6-1-17
4-3125	33-5-47-5	4-3409	33-5-35.5-9	4-5702	33-9-1-2	4-5821	33-6-1-18
4-3126	33-5-47-6	4-3410	33-5-35.5-10	4-5703	33-9-1-3	4-5822	33-6-1-19
4-3127	33-5-47-7	4-3411	33-5-35.5-11	4-5704	33-9-1-4	4-5823	33-6-1-20
4-3128	33-5-47-8	4-3412	33-5-35.5-12	4-5705	33-9-1-5	4-5824	33-6-1-21
4-3129	33-5-47-9	4-3413	33-5-35.5-13	4-5706	33-9-8-1	4-5825	33-6-1-22
4-3130	33-5-47-10	4-3414	33-5-35.5-14	4-5707	33-9-8-2	4-5826	33-6-1-23
4-3201	33-5-27-1	4-3415	33-5-35.5-15	4-5708	33-9-1-6	4-5827	33-6-1-24
4-3202	33-5-27-2	4-3416	33-5-35.5-16	4-5709	33-9-1-7	4-5828	33-6-1-25
4-3203	33-5-27-3	4-3417	33-5-35.5-17	4-5710	33-9-1-8	4-5830	33-6-1-26

Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein
4-5831	33-6-2-1	4-6311	33-1-6-2	4-6903	33-13-1-2	4-7130	33-4-5.5-6
4-5832	33-6-2-2	4-6312	33-1-6-3	4-6904	33-13-3-1	4-7131	33-4-5.5-7
4-5841	33-6-1-12.1	4-6313	33-1-6-4	4-6905	33-13-9-1	4-7132	33-4-5.5-8
4-5842	33-6-1-12.2	4-6314	33-1-6-5	4-6913	33-13-12-1	4-7133	33-4-5.5-9
4-5843	33-6-1-12.3	4-6401	33-5.5-1-1	4-6914	33-13-12-2	4-7134	33-4-5.5-10
4-5844	33-6-1-12.4	4-6402	33-5.5-1-2	4-6915	33-13-12-3	4-7135	33-4-5.5-11
4-5845	33-6-1-12.5	4-6403	33-5.5-1-3	4-6916	33-13-12-4	4-7136	33-4-5.5-12
4-5846	33-6-1-12.6	4-6404	33-5.5-1-4	4-6917	33-13-12-5	4-7137	33-4-5.5-13
4-5901	33-7-1-1	4-6405	33-5.5-1-5	4-6918	33-13-12-6	4-7138	33-4-5.5-14
4-5902	33-7-1-2	4-6406	33-5.5-1-6	4-6919	33-13-12-7	4-7139	33-4-5.5-15
4-5903	33-7-1-3	4-6407	33-5.5-1-7	4-6920	33-13-12-8	4-7140	33-4-5.5-16
4-5904	33-7-1-4	4-6408	33-5.5-1-8	4-6923	33-13-12-9	4-7141	33-4-5.5-17
4-5905	33-7-1-5	4-6409	33-5.5-1-9	4-7001	33-13-8-1	4-7142	33-4-5.5-18
4-5906	33-7-1-6	4-6410	33-5.5-1-10	4-7002	33-13-8-2	4-7143	33-4-5.5-19
4-5907	33-7-1-7	4-6411	33-5.5-1-11	4-7003	33-13-8-3	4-7144	33-4-5.5-20
4-5908	33-7-1-8	4-6412	33-5.5-1-12	4-7004	33-13-8-4	4-7145	33-4-5.5-21
4-6006	33-10-2-1	4-6413	33-5.5-1-13	4-7005	33-13-8-5	4-7146	33-4-5.5-22
4-6008	33-10-5-4	4-6414	33-5.5-1-14	4-7006	33-13-8-6	4-7301	33-15-23-1
4-6012	33-10-3-1	4-6415	33-5.5-1-15	4-7007	33-13-8-7	4-7302	33-15-23-2
4-6015	33-10-1-1	4-6416	33-5.5-1-16	4-7008	33-13-8-8	4-7303	33-15-23-3
4-6017	33-13-11-1	4-6417	33-5.5-1-17	4-7009	33-13-8-9	4-7304	33-15-23-4
4-6018	33-10-5-5	4-6418	33-5.5-1-18	4-7010	33-13-8-10	4-7305	33-15-23-5
4-6029	33-10-11-1	4-6419	33-5.5-1-19	4-7011	33-13-8-11	4-7306	33-15-23-6
4-6101	33-10-4-1	4-6420	33-5.5-1-20	4-7012	33-13-8-12	4-7307	33-15-24-1
4-6102	33-10-7-1	4-6421	33-5.5-1-21	4-7013	33-13-8-13	4-7309	33-1-4-1
4-6103	33-10-4-6	4-6422	33-5.5-1-22	4-7014	33-13-8-14	4-7310	33-15-25-1
4-6104	33-10-5-3	4-6423	33-5.5-1-23	4-7015	33-13-8-15	4-7311	33-15-26-1
4-6105	33-10-4-2	4-6424	33-5.5-1-24	4-7016	33-13-8-16	4-7312	33-15-26-2
4-6106	33-10-4-3	4-6501	33-5.5-2-1	4-7017	33-13-8-17	4-7313	33-15-26-3
4-6107	33-10-10-1	4-6502	33-5.5-2-2	4-7018	33-13-8-18	4-7314	33-15-26-4
4-6108	33-10-4-4	4-6503	33-5.5-2-3	4-7019	33-13-8-19	4-7315	33-15-26-5
4-6109	33-10-4-5	4-6504	33-5.5-2-4	4-7020	33-13-8-20	4-7316	33-15-26-6
4-6112	33-10-4-7	4-6505	33-5.5-2-5	4-7021	33-13-8-21	4-7317	33-15-26-7
4-6201	33-10-5-1	4-6506	33-5.5-2-6	4-7022	33-13-8-22	4-7318	33-15-26-8
4-6202	33-10-5-2	4-6507	33-5.5-2-7	4-7023	33-13-8-23	4-7319	33-15-26-9
4-6203	33-13-10-1	4-6508	33-5.5-2-8	4-7024	33-13-8-24	4-7401	33-1-5-1
4-6204	33-13-10-2	4-6509	33-5.5-2-9	4-7101	33-4-5-1	4-7402	33-1-5-2
4-6205	33-13-10-3	4-6510	33-5.5-2-10	4-7102	33-4-5-5	4-7403	33-1-5-3
4-6206	33-10-9-1	4-6511	33-5.5-2-11	4-7103	33-4-5-6	4-7405	33-2-3-1
4-6207	33-10-9-2	4-6512	33-5.5-2-12	4-7104	33-4-5-2	4-7416	33-1-3-1
4-6208	33-10-9-3	4-6513	33-5.5-2-13	4-7105	33-4-5-4	4-7417	33-2-3-1-1
4-6221	33-10-6-1	4-6514	33-5.5-2-14	4-7106	33-15-15-1	4-7418	33-2-3-1-2
4-6222	33-10-6-2	4-6515	33-5.5-2-15	4-7107	33-4-5-3	4-7419	33-2-3-1-3
4-6223	33-10-6-3	4-6516	33-5.5-2-16	4-7115	33-4-5-7	4-7601	33-13-14-1
4-6224	33-10-6-4	4-6517	33-5.5-2-17	4-7116	33-1-1-1	4-7602	33-13-14-2
4-6225	33-10-6-5	4-6518	33-5.5-2-18	4-7117	33-4-5-8	4-7603	33-13-14-3
4-6226	33-10-6-6	4-6519	33-5.5-2-19	4-7118	33-15-22-1	4-7604	33-13-14-4
4-6227	33-10-6-7	4-6520	33-5.5-2-20	4-7119	33-15-22-2	4-7605	33-13-14-5
4-6228	33-10-6-8	4-6521	33-5.5-2-21	4-7120	33-15-22-3	4-7701	33-2-1-1-1
4-6229	33-10-6-9	4-6522	33-5.5-2-22	4-7121	33-15-22-4	4-7702	33-2-1-1-2
4-6230	33-10-8-1	4-6523	33-5.5-2-23	4-7123	33-15-20-1	4-7703	33-2-1-1-3
4-6301	33-1-2-1	4-6524	33-5.5-2-24	4-7125	33-4-5.5-1	4-7711	33-2-1-2-1
4-6305	33-9-3-1	4-6525	33-5.5-2-25	4-7126	33-4-5.5-2	4-7712	33-2-1-2-2
4-6306	33-13-4-1	4-6526	33-5.5-2-26	4-7127	33-4-5.5-3	4-7713	33-2-1-2-3
4-6309	33-15-18-1	4-6901	33-13-5-1	4-7128	33-4-5.5-4	4-7714	33-2-1-2-4
4-6310	33-1-6-1	4-6902	33-13-1-1	4-7129	33-4-5.5-5	4-7715	33-2-1-2-5

Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein	Prior Burns'	Herein
4-7716	33-2.1-2-6	4-8010	33-2.1-6-10	5-213	33-11-1-66	5-1002	33-11-13-1
4-7717	33-2.1-2-7	4-8011	33-2.1-6-11	5-214	33-11-1-115	5-1003	33-11-1-56
4-7731	33-2.1-3-1	4-8012	33-2.1-6-12	5-301	33-11-1-23	5-1004	33-11-1-57
4-7732	33-2.1-3-2	4-8013	33-2.1-6-13	5-302	33-11-1-24	5-1005	33-11-1-58
4-7733	33-2.1-3-3	4-8014	33-2.1-6-14	5-303	33-11-1-31	5-1006	33-11-1-59
4-7801	33-2.1-4-1	4-8015	33-2.1-6-15	5-304	33-11-1-26	5-1007	33-11-1-60
4-7802	33-2.1-4-2	4-8016	33-2.1-6-16	5-305	33-11-1-116	5-1008	33-11-1-61
4-7803	33-2.1-4-3	4-8017	33-2.1-6-17	5-306	33-11-1-11	5-1101	33-11-1-67
4-7804	33-2.1-4-4	4-8018	33-2.1-6-18	5-307	33-11-1-12	5-1102	33-11-1-68
4-7805	33-2.1-4-5	4-8019	33-2.1-6-19	5-308	33-11-1-13	5-1103	33-11-1-73
4-7806	33-2.1-4-6	4-8020	33-2.1-6-20	5-309	33-11-1-14	5-1104	33-11-1-110
4-7807	33-2.1-4-7	4-8021	33-2.1-6-21	5-310	33-11-1-103	5-1105	33-11-1-69
4-7808	33-2.1-4-8	4-8022	33-2.1-6-22	5-311	33-11-1-46	5-1106	33-11-1-70
4-7809	33-2.1-4-9	4-8023	33-2.1-6-23	5-312	33-11-1-54	5-1107	33-11-1-71
4-7810	33-2.1-4-10	4-8024	33-2.1-6-24	5-313	33-11-1-22	5-1108	33-11-1-72
4-7811	33-2.1-4-11	4-8025	33-2.1-6-25	5-314	33-11-1-25	5-1109	33-11-1-79
4-7812	33-2.1-4-12	4-8026	33-2.1-6-26	5-315	33-11-1-27	5-1110	33-11-1-80
4-7813	33-2.1-4-13	4-8027	33-2.1-6-27	5-316	33-11-1-28	5-1111	33-11-1-81
4-7814	33-2.1-4-14	4-8028	33-2.1-6-28	5-317	33-11-1-29	5-1112	33-11-1-82
4-7901	33-2.1-5-1	4-8029	33-2.1-6-29	5-401	33-11-1-18	5-1113	33-11-1-83
4-7902	33-2.1-5-2	4-8030	33-2.1-6-30	5-402	33-11-1-19	5-1114	33-11-1-84
4-7903	33-2.1-5-3	5-101	33-11-12-1	5-403	33-11-1-14-1	5-1115	33-11-1-75
4-7904	33-2.1-5-4	5-102	33-11-1-1	5-404	33-11-1-14-2	5-1116	33-11-1-76
4-7906	33-2.1-5-6	5-103	33-11-16-1	5-405	33-11-7-1	5-1117	33-11-1-78
4-7907	33-2.1-5-7	5-104	33-11-18-1	5-406	33-11-1-20	5-1118	33-11-4-1
4-7908	33-2.1-5-8	5-105	33-11-18-2	5-407	33-11-1-21	5-1119	33-11-1-85
4-7909	33-2.1-5-9	5-106	33-11-18-3	5-501	33-11-1-36	5-1120	33-11-1-86
4-7910	33-2.1-5-10	5-107	33-11-18-4	5-502	33-11-3-1	5-1121	33-11-1-87
4-7911	33-2.1-5-11	5-108	33-11-18-5	5-503	33-11-3-2	5-1122	33-11-1-112
4-7912	33-2.1-5-12	5-109	33-11-18-6	5-504	33-11-3-3	5-1123	33-11-1-74
4-7913	33-2.1-5-13	5-110	33-11-18-8	5-601	33-11-1-101	5-1201	33-11-2-1
4-7914	33-2.1-5-14	5-111	33-11-18-9	5-602	33-11-1-102	5-1202	33-11-2-2
4-7915	33-2.1-5-15	5-112	33-11-18-10	5-701	33-11-1-37	5-1203	33-11-2-3
4-7916	33-2.1-5-16	5-113	33-11-18-11	5-702	33-11-1-38	5-1204	33-11-2-4
4-7917	33-2.1-5-17	5-114	33-11-15-2	5-704	33-11-1-39	5-1205	33-11-2-5
4-7918	33-2.1-5-18	5-115	33-11-1-2	5-705	33-11-1-40	5-1206	33-11-2-6
4-7919	33-2.1-5-19	5-116	33-11-1-4	5-706	33-11-1-41	5-1207	33-11-2-7
4-7920	33-2.1-5-20	5-117	33-11-1-3	5-801	33-11-1-42	5-1208	33-11-2-8
4-7921	33-2.1-5-21	5-118	33-11-1-107	5-802	33-11-11-1	5-1209	33-11-2-9
4-7922	33-2.1-5-22	5-119	33-11-1-108	5-803	33-11-1-43	5-1210	33-11-2-10
4-7923	33-2.1-5-23	5-120	33-11-1-109	5-804	33-11-1-44	5-1211	33-11-2-11
4-7924	33-2.1-5-24	5-121	33-11-8-1	5-805	33-11-1-30	5-1212	33-11-2-12
4-7925	33-2.1-5-25	5-122	33-11-10-1	5-806	33-11-1-45	5-1213	33-11-2-13
4-7926	33-2.1-5-26	5-123	33-11-21-1	5-808	33-11-1-47	5-1214	33-11-2-14
4-7927	33-2.1-5-27	5-124	33-11-21-2	5-809	33-11-1-48	5-1215	33-11-2-15
4-7928	33-2.1-5-28	5-201	33-11-18-7	5-901	33-11-1-49	5-1216	33-11-2-16
4-7929	33-2.1-5-29	5-202	33-11-19-1	5-902	33-11-1-50	5-1217	33-11-2-17
4-8001	33-2.1-6-1	5-203	33-11-19-2	5-903	33-11-1-51	5-1218	33-11-2-18
4-8002	33-2.1-6-2	5-204	33-11-15-1	5-904	33-11-1-52	5-1301	33-11-9-1
4-8003	33-2.1-6-3	5-206	33-11-6-1	5-905	33-11-1-53	5-1302	33-11-1-62
4-8004	33-2.1-6-4	5-207	33-11-1-8	5-906	33-11-1-77	5-1303	33-11-1-63
4-8005	33-2.1-6-5	5-208	33-11-1-5	5-907	33-11-1-104	5-1304	33-11-1-65
4-8006	33-2.1-6-6	5-209	33-11-1-6	5-908	33-11-1-105	5-1305	33-11-1-64
4-8007	33-2.1-6-7	5-210	33-11-1-7	5-909	33-11-1-106	5-1401	33-11-1-15
4-8008	33-2.1-6-8	5-211	33-11-1-113	5-910	33-11-1-111	5-1402	33-11-1-16
4-8009	33-2.1-6-9	5-212	33-11-1-114	5-1001	33-11-1-55	5-1403	33-11-1-17

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5-1404	33-11-1-32	9-3122	33-12-2-24	49-2014	33-15-9-10	49-2612	33-14-7-12
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Indiana Code

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COURTS AND COURT OFFICERS

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ARTICLE 1

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CHAPTER 1

JURY SELECTION

33-1-1-1. [Repealed.]

Compiler's Notes. This chapter, concerning disqualification of persons who have served on a jury within a year from jury

selection, was repealed by P.L.17-1985, § 27. For present comparable provisions, see IC 33-4-5-7.

CHAPTER 1.5

PRODUCT LIABILITY

33-1-1.5-1 — 33-1-1.5-10. [Repealed.]

Compiler's Notes. This chapter, relating to product liability, was repealed by P.L. 1-1998, § 221, effective July 1, 1998. For similar provisions, see IC 34-20.

CHAPTER 2

TRIAL IN PROGRESS AT END OF TERM OF COURT

SECTION.

33-1-2-1. Term prolonged to finish trial.

33-1-2-1. Term prolonged to finish trial. — If, at the expiration of the time fixed by law for the continuance of the term of any court, the trial of a cause shall be progressing, said court may continue its sitting beyond such time, and require the attendance of the jury and witnesses, and do, transact and enforce all other matters which shall be necessary for the determination of such cause; and in such case, the term of said court shall not be deemed to be ended until the cause shall have been fully disposed of by the court. [Acts 1885 (Spec. Sess.), ch. 22, § 1, p. 114.]

NOTES TO DECISIONS

ANALYSIS

In general.
Construction.
Continuance in vacation period.
Legality.
Notice.
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Power of special judge.
Procedure permitted.

In General.

Courts held in pursuance of this section are not adjourned terms, but are continuations of existing terms. *Wayne Pike Co. v. Hammons*, 129 Ind. 368, 27 N.E. 487 (1891).

The continuance of a trial in progress at the end of a term does not constitute an adjourned term of the court. *Wayne Pike Co. v. Hammons*, 129 Ind. 368, 27 N.E. 487 (1891).

If the trial of a cause is not completed at the end of a term, the trial may be continued although the court should be in session in another county. *Sutherlin v. State*, 150 Ind. 154, 49 N.E. 947 (1898).

An adjourned term of court may be held by a special judge during the time that a regular term is being held by the regular judge in another county of the same circuit. *Wheeler v. State*, 158 Ind. 687, 63 N.E. 975 (1902).

When a court finally adjourns for the term, the court cannot again be convened for the transaction of business except as an ad-

journd term as provided by statute. *State v. Hindman*, 159 Ind. 586, 65 N.E. 911 (1903).

An adjourned term was regarded as a part of the regular term. *Smith v. Smith*, 17 Ind. 75 (1861); *Baltimore & O.R.R. v. Ray*, 36 Ind. App. 430, 73 N.E. 942 (1905).

If a trial was in progress when a term of court ended by limitation of law, the term would be continued until the trial was concluded. *Dorsch v. Rosenthal*, 39 Ind. 209 (1872); *Krutz v. Craig*, 53 Ind. 561 (1876); *Walker v. State*, 102 Ind. 502, 1 N.E. 856 (1885); *Sutherlin v. State*, 150 Ind. 154, 49 N.E. 947 (1898); *Watts v. Watts*, 176 Ind. 334, 95 N.E. 1107 (1911); *Moerecke v. Bryan*, 183 Ind. 591, 108 N.E. 948 (1915).

The Supreme Court judicially knows the regular terms of the circuit court of a county, but does not take notice of adjourned and special sessions. *Glaser v. State*, 204 Ind. 59, 183 N.E. 33 (1932).

Without the formalities essential to a legally constituted court, and compliance with the provisions of the statutes for the holding of special terms, adjourned terms, or continuing terms, the filing by a judge of his finding of facts and conclusions of law in vacation, with the papers in the case, by virtue of § 2-2102 (since repealed), did not constitute an announcement by such finding by the court which would cut off the right of dismissal under § 2-901 (since repealed). *State v.*

In General. (Cont'd)

Bridges, 116 Ind. App. 483, 64 N.E.2d 411 (1946).

Construction.

This section is remedial and entitled to a liberal construction for the benefit of the parties having business in the courts and the general public, and does not require that before the close of the term the judge shall enter a specific order directing the continuance of the trial in vacation since it is self-executing, insofar as its availability is concerned. *Sikich v. Springmann*, 221 Ind. 483, 48 N.E.2d 808, cert. denied, 320 U.S. 783, 64 S. Ct. 189, 88 L. Ed. 470 (1943).

The words "at the expiration of the time fixed by law for the continuance of the term of any court" are not to be strictly construed to mean only the last day of the term. *Clevenger v. Kern*, 100 Ind. App. 581, 197 N.E. 731 (1935).

This section is for the benefit of parties transacting business therein and the general public and is remedial and intended to prevent mistrial, and should be liberally construed to that end. *Clevenger v. Kern*, 100 Ind. App. 581, 197 N.E. 731 (1935).

If a term of court at which a cause is being tried ends on Saturday, the adjournment of the trial on Friday until the following Monday, which is the first day of the following term, is not violative of this section. *Clevenger v. Kern*, 100 Ind. App. 581, 197 N.E. 731 (1935).

Continuance in Vacation Period.

The fact that the trial of a cause was in progress at the close of the term of court, and that the hearing continued into vacation period with the acquiescence of all the parties, brought the procedure within this section. *Sikich v. Springmann*, 221 Ind. 483, 48 N.E.2d 808, cert. denied, 320 U.S. 783, 64 S. Ct. 189, 88 L. Ed. 470 (1943).

Legality.

It would be presumed that an adjourned term was legally held when the contrary did not appear. *Wood v. Franklin*, 97 Ind. 117 (1884); *Donahue v. State*, 165 Ind. 148, 74

N.E. 996 (1905); *Lewis v. Albertson*, 23 Ind. App. 147, 53 N.E. 1071 (1899).

The fact that court was being held by a special judge in another county of the circuit at the time of the holding of the adjourned term did not render the same illegal. *Smurr v. State*, 105 Ind. 125, 4 N.E. 445 (1886).

Parties in court when an adjourned term was fixed must then object or they would waive their right to question the legality of the term. *Louisville, N.A. & C. Ry. v. Power*, 119 Ind. 269, 21 N.E. 751 (1889); *Moerecke v. Bryan*, 183 Ind. 591, 108 N.E. 948 (1915).

Notice.

If the court failed to specify the manner of giving notice, but the proper notice was given, the term would be legal. *Conrad v. Johnson*, 20 Ind. 421 (1863); *Cordell v. State*, 22 Ind. 1 (1864); *Wood v. Franklin*, 97 Ind. 117 (1884).

Postponement.

A cause on trial at the end of a term may be postponed to a day certain of the next term. *Wayne Pike Co. v. Hammons*, 129 Ind. 368, 27 N.E. 487 (1891); *Dorsey Mach. Co. v. McCaffrey*, 139 Ind. 545, 38 N.E. 208, 47 Am. St. R. 290 (1894).

If a trial is in progress at the end of a term, the same may be postponed until the beginning of the next term. *McDonald v. McDonald*, 142 Ind. 55, 41 N.E. 336 (1895).

Power of Special Judge.

A special judge had the same power under this section as a regular judge. *Perkins v. Hayward*, 124 Ind. 445, 24 N.E. 1033 (1890).

Procedure Permitted.

The court at an adjourned term could have caused the proceedings of the regular term to be entered. *Green v. White*, 18 Ind. 317 (1862); *Knight v. State*, 70 Ind. 375 (1880).

Grand juries may be impaneled and indictments returned at adjourned terms of court. *Donahue v. State*, 165 Ind. 148, 74 N.E. 996 (1905).

Motions for new trials may be filed at adjourned terms in causes tried at the regular term. *Baltimore & O.R.R. v. Ray*, 36 Ind. App. 430, 73 N.E. 942 (1905).

CHAPTER 3

ATTORNEY ENTITLED TO HOLD LIEN ON JUDGMENT

SECTION.

33-1-3-1. Lien of attorney.

33-1-3-1. Lien of attorney. — Any attorney practicing his profession in any court of record in this state, shall be entitled to hold a lien, for his fees, on any judgment rendered in favor of any person or persons employing such

attorney to obtain the same: Provided, That such attorney, within sixty (60) days from the time such judgment shall have been rendered, enter in writing upon the docket or record wherein the judgment is recorded, his intention to hold a lien thereon, together with the amount of his claim, and if an appeal is taken on such judgment, such lien may be entered within sixty (60) days from the date the opinion of the higher court is recorded in the office of the clerk of the trial court or from the date of final judgment where the cause is reversed and retried. [Acts 1865 (Spec. Sess.), ch. 59, § 1, p. 164; 1949, ch. 52, § 1.]

Res Gestae. Attorneys and Their Ethics, 21 Res Gestae 528.

Rules and rulings for the trial lawyer, 41 (No. 5) Res Gestae 42 (1997).

Valparaiso University Law Review. Collecting the Attorney's Fee in Indiana: A Proposal for Change, 21 Val. U.L. Rev. 467 (1987).

Cited: Barelli v. Levin, 144 Ind. App. 576, 17 Ind. Dec. 632, 247 N.E.2d 847 (1969); Kizer v. Davis, 174 Ind. App. 559, 59 Ind. Dec. 616, 369 N.E.2d 439 (1977); Page v. Schrenker, 439 N.E.2d 694 (Ind. App. 1982); Greenfield v. Greenfield, 591 N.E.2d 1057 (Ind. App. 1992).

NOTES TO DECISIONS

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Compromise without attorney's consent.

Deposits in court.

Discharge of lien, consent.

Limitation as bar.

Priority of lien.

Satisfaction of judgment.

Settlement by client.

Time for entering lien.

In General.

Attorneys have equitable liens upon funds that they secure by their services for their clients. *Justice v. Justice*, 115 Ind. 201, 16 N.E. 615 (1888); *Koons v. Beach*, 147 Ind. 137, 45 N.E. 601 (1896); *Alden v. White*, 32 Ind. App. 393, 68 N.E. 913 (1903); *Miedreich v. Rank*, 40 Ind. App. 393, 82 N.E. 117 (1907).

If an attorney, with the consent of the client, takes a lien for debts due that are not a lien on the judgment, creditors who have no lien on the judgment cannot complain. *Harshman v. Armstrong*, 119 Ind. 224, 21 N.E. 662 (1889).

A lien created by this statute in favor of an attorney is confined to the judgment and the property recovered by him for his client. *Booram v. Day*, 216 Ind. 503, 25 N.E.2d 329 (1940).

Where, in an action to recover attorney fees, under the terms of an employment contract, for services rendered in setting aside pretended codicils to a will, the complaint stated a good cause of action at law and the

prayer thereof asked for a money judgment, and an amended paragraph of the complaint also contained allegations concerning an attorney's lien securing the amount of such fees, the prayer thereof also asking for foreclosure of such lien, defendant, who contended that the complaint showed only an action at law for attorney fees, could not complain of the insufficiency of the evidence to support the decision granting a money judgment to plaintiff merely because the decision failed to give equitable relief to which the complaint did not, according to defendant, show plaintiffs to be entitled. *Potter v. Daily*, 220 Ind. 43, 40 N.E.2d 339 (1942).

An attorney's right to a fee may be protected where a lien is provided by statute, or where a fund has been created by the attorney's efforts, out of which he is equitably entitled to compensation, or in case of fraud or collusion practiced to deprive an attorney of his fee, or where a statute provides for a fee payable direct to the attorney pursuant to order of court made in the course of litigation. *State ex rel. McNabb v. Allen* Superior Court No. 2, 225 Ind. 402, 75 N.E.2d 788 (1947).

Attorney satisfied the requirements of this section by timely recording on the face of the judgment his intention to hold a lien in the amount called for by his valid contingent fee contract. *In re Innkeepers of New Castle, Inc.*, 671 F.2d 221 (7th Cir.), cert. denied, 459 U.S. 908, 103 S. Ct. 212, 74 L. Ed. 2d 169 (1982).

Action to Enforce.

In an action to enforce such a lien, the amount thereof must be stated. *Day v. Bowman*, 109 Ind. 383, 10 N.E. 126 (1887).

Assignment of Judgment.

The assignee of the judgment does not be-

Assignment of Judgment. (Cont'd)

come liable for the lien when nothing is collected on the judgment. *Peterson v. Struby*, 25 Ind. App. 19, 56 N.E. 733 (1900).

Assignment of Lien.

Liens of attorneys on judgments may be assigned. *Day v. Bowman*, 109 Ind. 383, 10 N.E. 126 (1887).

Cancellation of Lien.

An equity court of original jurisdiction may, on a proper showing, cancel an attorney's lien. *Vivian Collieries Co. v. Cahall*, 184 Ind. 473, 110 N.E. 672 (1915).

Where attorneys entered on the margin of the record a notice of their intention to hold a lien under this section, the filing of a petition by the judgment creditor seeking to have the claim expunged from the record did not constitute the commencement of an action requiring the service of process under § 2-801 (since repealed). *Clarke v. Harris*, 76 Ind. App. 185, 132 N.E. 6 (1921).

A change of venue from the judge may be claimed in a summary proceeding to question the validity of an attorney's lien. *Clarke v. Harris*, 76 Ind. App. 185, 132 N.E. 6 (1921).

Where attorneys who entered notice of lien on margin of record were ordered to appear to show cause why the claim should not be expunged from the record on the judgment creditor's petition therefor, they were not entitled to a trial by jury, the proceedings being one in equity. *Clarke v. Harris*, 76 Ind. App. 185, 132 N.E. 6 (1921).

Compromise Without Attorney's Consent.

Where a client compromised and settled his claim before judgment, without his attorney's consent, the attorney had no enforceable lien on the money paid to the client. *Olczak v. Marchelewicz*, 98 Ind. App. 244, 188 N.E. 790 (1934).

A client's settlement of claim before judgment, without his attorney's consent, did not give rise to debt created by "fraud, embezzlement, or misappropriation," so as to prevent discharge in bankruptcy, or release of client's liability to attorney, under this section, and 11 U.S.C. § 35(4). *Olczak v. Marchelewicz*, 98 Ind. App. 244, 188 N.E. 790 (1934).

Deposits in Court.

In order to reconcile Rule TR. 67(B) with this section, a clerk must hold any money paid pursuant to a judgment for sixty days to ensure that no attorney's liens are filed or secure a release from the attorney of record. *Adler v. Stoops*, 671 N.E.2d 165 (Ind. App. 1996).

Discharge of Lien, Consent.

Liens of attorneys on judgments cannot be

discharged without their consent. *McCabe v. Britton*, 79 Ind. 224 (1881); *Peterson v. Struby*, 25 Ind. App. 19, 56 N.E. 733 (1900).

If an attorney has a lien upon a judgment or fund, a settlement between the parties to the action without knowledge or consent of the attorney will not defeat his claim. *Hammond, W. & E.C.R.R. v. Kaput*, 61 Ind. App. 543, 110 N.E. 109 (1915).

Limitation as Bar.

An attorney cannot have a lien declared in his favor on a judgment after his claim is barred by the statute of limitations. *McNagney v. Frazer*, 1 Ind. App. 98, 27 N.E. 431 (1891).

Priority of Lien.

The lien of an attorney has priority over the claims of persons against the judgment plaintiff, and such lien cannot be defeated by the setting off of one judgment against another. *Johnson v. Ballard*, 44 Ind. 270 (1873); *Blair v. Lanning*, 61 Ind. 499 (1877); *Adams v. Lee*, 82 Ind. 587 (1882); *Puett v. Beard*, 86 Ind. 172, 44 Am. R. 280 (1882).

An attorney who has procured a real estate deed to be declared a mortgage on the land, is entitled to a lien on the judgment and such real estate, subject to prior mortgages thereon. *Booram v. Day*, 216 Ind. 503, 25 N.E.2d 329 (1940).

An attorney who recovered land for his client has a lien which takes precedence over general creditors of the client, or those thereafter acquiring liens upon the land so recovered, on the ground that the attorney assisted in creating the assets out of which they seek to recover, and by so doing benefited, not only his client, but the other claimants as well. *Booram v. Day*, 216 Ind. 503, 25 N.E.2d 329 (1940).

Where the holder of a deed absolute in form procured an attorney to sue and obtain a decree declaring such deed to be a mortgage, and the attorney, on obtaining such a decree, reserved an attorney's lien on the decree and on the real estate named in the deed, the attorney's lien takes precedence over the lien held by his client, the holder of the mortgage lien. *Booram v. Day*, 216 Ind. 503, 25 N.E.2d 329 (1940).

An attorney holding a lien upon real estate, to secure payment of his fee for obtaining a decree declaring an absolute deed to real estate to be a mortgage, cannot have his lien declared prior to the lien of the deed which was declared to be a mortgage, and cannot complain on the ground that his client arranged with another prior mortgage lienholder that the latter should collect the rents and apply them upon taxes and repairs, and on another prior mortgage lien on the land.

Priority of Lien. (Cont'd)

Booram v. Day, 216 Ind. 503, 25 N.E.2d 329 (1940).

An attorney's lien, regardless of when it is filed during the sixty-day period, relates back to the date the attorney's services are provided and takes priority over the rights of other creditors, including the judgment creditor. *Adler v. Stoops*, 671 N.E.2d 165 (Ind. App. 1996).

Satisfaction of Judgment.

Successor of judgment creditor was not required to obtain consent of all attorneys obtaining judgment before satisfying said judgment and accepting notes and mortgage in lieu thereof, where the judgment contained a separate item for attorneys' fees and attorneys entered on margin of judgment record a written claim of lien thereon to extent of item of attorneys' fees specified therein, and the same two attorneys without objection discharged the judgment for the successor; and it was immaterial whether successor knew of item in judgment for attorneys' fees and was also immaterial that attorneys did not consent that amount of said item of attorneys' fees be included in said notes taken in lieu of said judgment. *Berry v. State Bank*, 99 Ind. App. 655, 193 N.E. 922 (1935).

Collateral References. Attorney's right to charging lien upon continuing payments to which client becomes entitled as result of litigation. 99 A.L.R.2d 451.

Rights and remedies of client as regards papers and documents on which attorney has lien. 3 A.L.R.2d 148.

Sufficiency of notice to opposing party (or of serving or filing thereof) required to establish attorney's lien upon client's claim or course of action. 85 A.L.R.2d 859.

Settlement by Client.

Liens of attorneys can only be taken on judgments rendered, and clients may settle their claims at any time before judgment, without the consent of their attorneys. *Hanna v. Island Coal Co.*, 5 Ind. App. 163, 31 N.E. 846, 51 Am. St. R. 246 (1892).

Parties have the right to adjust their differences out of court without the consent of their attorneys, but, in doing so, they can not deprive such attorneys of any of their legal rights. *Miedreich v. Rank*, 40 Ind. App. 393, 82 N.E. 117 (1907).

Where attorneys claim that a judgment was satisfied in fraud of an equitable lien thereon for fees alleged to be due them, their remedy is by motion to have the satisfaction set aside instead of having execution issued for such lien as entered on the judgment docket. *Kennedy v. Eder*, 79 Ind. App. 644, 139 N.E. 372 (1923).

Time for Entering Lien.

The lien must be entered within a reasonable time after the entry of the judgment. *Blair v. Lanning*, 61 Ind. 499 (1877); *Day v. Bowman*, 109 Ind. 383, 10 N.E. 126 (1887); *Alderman v. Nelson*, 111 Ind. 255, 12 N.E. 394 (1887); *Wood v. Hughes*, 138 Ind. 179, 37 N.E. 588 (1894).

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Attorney's retaining lien: what items of client's property or funds are not subject to lien. 70 A.L.R.4th 827.

Alimony or child-support awards as subject to attorney's liens. 49 A.L.R.5th 595.

CHAPTER 4

POOR PERSONS — APPEAL TO SUPREME COURT OR COURT OF APPEALS

SECTION.

33-1-4-1. Poor persons — Court may order transcript.

33-1-4-1. Poor persons — Court may order transcript. — An indigent person desiring to appeal to the supreme court or the court of appeals from the decision of any circuit court or criminal court in criminal cases, and not having sufficient means to procure the longhand manuscript or transcript of the evidence taken in shorthand, by the order or permission of any court, the court shall direct the shorthand reporter to transcribe the shorthand notes of evidence into longhand, as soon as practicable, and

deliver the same to the indigent person. However, the court must be satisfied that the indigent person has not sufficient means to pay the reporter for making the longhand manuscript or transcript of evidence, and the reporter may charge such compensation as is allowed by law in such cases for making and furnishing a longhand manuscript, which service of the reporter shall be paid by the court out of the proper county treasury. [Acts 1893, ch. 33, § 1, p. 32; P.L.3-1989, § 185.]

Cross References. Industrial accident cases, persons unable to afford manuscripts or transcripts of proceedings, IC 4-22-4-1.

Public defender, obtaining of transcript, IC 33-1-7-5.

Indiana Law Journal. An Indigent Criminal Seeks an Appeal, 36 Ind. L.J. 237.

NOTES TO DECISIONS

ANALYSIS

Construction.
Dependent child.
Discretion of court.
Failure to appropriate funds.
Hearing, necessity.
Petition for transcript.
Remedy of poor person.
Right to transcript.

Construction.

The phrase "shall be paid by the court or judge thereof out of the proper county treasury" means only that the judge shall verify the amount as a valid claim against the county. State ex rel. Pappas v. Baker, 209 Ind. 25, 197 N.E. 912 (1935).

Dependent Child.

A dependent child whose parents are able to pay for his necessary expenses is neither a poor person nor a pauper within the meaning of this section. State ex rel. Butler v. Allen Circuit Court, 241 Ind. 627, 170 N.E.2d 663 (1960).

Discretion of Court.

Whether the county under this section shall furnish a transcript to a person desiring to appeal is a matter within the sound discretion of the trial court and its decision thereon will not be disturbed except for an abuse of such discretion. State ex rel. Ward v. Porter Circuit Court, 234 Ind. 573, 130 N.E.2d 136 (1955).

Although it is within the discretion of the trial court judge to determine whether, on the basis of all resources or means legally available to the defendant, he is entitled to appeal as a pauper, it is error for the court, after accused asserts he is without money, means or property to prosecute his appeal, to deny such petition without a hearing, notwithstanding the court may have made an investigation of its own. State ex rel. Butler v. Allen

Circuit Court, 241 Ind. 627, 170 N.E.2d 663 (1960).

Failure to Appropriate Funds.

The remedy provided by this section cannot be nullified by failure of the county council to appropriate funds. Such appropriation can be compelled by a court reporter, after rendering service under this section. State ex rel. Pappas v. Baker, 209 Ind. 25, 197 N.E. 912 (1935).

Hearing, Necessity.

Where an accused asserts he is without money, means or property with which to prosecute his appeal, it becomes the duty of the court to carefully consider the fact of his ability or inability to do so and if his affidavits are contradicted by extraneous information on the subject it is the duty of the court to hear evidence on the issue and make his finding on the basis of a record which can be submitted for review on appeal. State ex rel. Butler v. Allen Circuit Court, 241 Ind. 627, 170 N.E.2d 663 (1960).

Where defendant, a minor, sought to appeal as a poor person under this section asserting that he was without means or property to prosecute the appeal, a denial of such petition without a hearing was error. State ex rel. Butler v. Allen Circuit Court, 241 Ind. 627, 170 N.E.2d 663 (1960).

Petition for Transcript.

Where it was shown that the relator was without funds to employ counsel at his trial, a pauper attorney was named, and there had been no change in his financial status since the trial, and he was unable to work due to jail confinement, he would not have sufficient funds to procure a transcript of the evidence for use in the appeal in which he relied on the matter of new evidence, presenting the same to the trial court in motion for new trial, the court erred in not granting petition for tran-

Petition for Transcript. (Cont'd)
script. State ex rel. Ward v. Porter Circuit Court, 234 Ind. 573, 130 N.E.2d 136 (1955).

Remedy of Poor Person.

The remedy for refusal of the trial court to furnish a poor person with a transcript of the evidence is the application to the Supreme Court for an order of mandate to the trial court. State ex rel. Ward v. Porter Circuit Court, 234 Ind. 573, 130 N.E.2d 136 (1955).

Right to Transcript.

Defendant is not entitled to a writ of mandamus to compel trial court to order transcription of evidence unless he shows that a transcript would enable him to present to the Supreme Court the merits of his appeal. State ex rel. Pappas v. Baker, 209 Ind. 25, 197 N.E. 912 (1935).

In order to establish a right to a transcript paid for by the county, appellant must show the trial court that he does not have sufficient means to procure a transcript, that the merits of the questions on appeal cannot be considered without such transcript, that the questions of error were presented to the trial court in the motion for a new trial, and upon such proper showing the trial court is required to order such transcript. State ex rel. Ward v. Porter Circuit Court, 234 Ind. 573, 130 N.E.2d 136 (1955).

The court is under no duty to provide a transcript and bill of exceptions at public expense for the purpose of an appeal, where there is no showing of merit upon which to have an appeal. Willoughby v. State, 242 Ind. 183, 167 N.E.2d 881 (1960), cert. denied, 374 U.S. 832, 83 S. Ct. 1876, 10 L. Ed. 2d 1055 (1963).

CHAPTER 5

PERSON NOT ATTORNEY PRACTICING LAW — PROHIBITED

SECTION.

33-1-5-1. Practice of law without admission prohibited.

33-1-5-2. [Repealed.]

SECTION.

33-1-5-3. Burden of proof as to admission.

33-1-5-1. Practice of law without admission prohibited. — It is a Class B misdemeanor for a person to hold himself out as a practicing lawyer, to conduct the trial of a case in any court of this state, or to engage in the business of a practicing lawyer, without first having been duly admitted as an attorney-at-law by the supreme court of this state. [Acts 1913, ch. 347, § 1, p. 940; 1978, P.L. 2, § 3301.]

Cross References. Contempt, punishment for refusal to deliver money or papers, IC 33-21-1-9.

Duties of an attorney, IC 33-21-1-3.

Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

Rules for admission to the bar and the discipline of attorneys, Rules A.D. 1-31.

Supreme Court jurisdiction, Ind. Const., art. 7, § 4.

Unauthorized practice of law, Rule A.D. 24.

Indiana Law Journal. Law and Social Work, 3 Ind. L.J. 183.

The Lawyer and the Public Welfare, 3 Ind. L.J. 390.

Law and Lawyers, 6 Ind. L.J. 92.

Reorganization of the Bar, 7 Ind. L.J. 153.

The Young Lawyer and the State Bar Association, 8 Ind. L.J. 174.

The State Bar Association and the Young Lawyer, 8 Ind. L.J. 181.

The Lawyers' Duty to the Public, 8 Ind. L.J. 469.

The Lawyers' Part in Preserving Individual Liberty, 9 Ind. L.J. 165.

Individual Responsibility of the Lawyer and Respect for the Law, 9 Ind. L.J. 244.

Bar Admission Litigation, 9 Ind. L.J. 315.

Can Indiana Constitutionally Impose Educational Prerequisites for Admission to the State Bar Examinations?, 9 Ind. L.J. 357.

The Legal Education Wilderness, 9 Ind. L.J. 369.

In re Todd and Constitutional Amendment, 10 Ind. L.J. 510.

Unauthorized Practice of Law, 13 Ind. L.J. 71.

Some Problems of the Indiana Bar, 13 Ind. L.J. 266.

Notre Dame Law Review. Is the American Bar Really Overcrowded?, 13 Notre Dame L. 190.

Bar Limitation — Student Quotas Versus Higher Law School Standards, 14 Notre Dame L. 34.

Valparaiso University Law Review. Land Transfers: Process and Processors, 22 Val. U.L. Rev. 493 (1988).

Opinions of Attorney General. It is not lawful for a person not admitted to the prac-

tice of law to appear for and represent a person other than himself in proceedings before a justice of the peace and, of course, a corporation can appear in court only through a duly admitted attorney-at-law. 1967, No. 52, p. 362.

Cited: *Miller v. Credit Bureau*, 156 Ind. App. 341, 36 Ind. Dec. 622, 296 N.E.2d 673 (1973); *Rollins Protective Servs. Co. v. Wright*, 493 N.E.2d 811 (Ind. App. 1986).

NOTES TO DECISIONS

ANALYSIS

Action for compensation.
Contempt.
Lay counsel.
Practice of law.
Trust company, practice of law.

Action for Compensation.

One who was not an attorney-at-law, but had served a railroad company and an insurance company as claims agent, who assisted the widow of a deceased railroad employee in preparing and presenting and settlement of a claim against the decedent's employer, for wrongful death, held engaged in the practice of law, and is not entitled to recover for such services, in view of this section and former IC 33-1-5-2. *Fink v. Peden*, 214 Ind. 584, 17 N.E.2d 95 (1938).

In an action to recover compensation for serving as an attorney, the plaintiff has the burden of proving that he had been duly admitted to practice law in this state at the time he was employed to perform such service. *Harris v. Clark*, 81 Ind. App. 494, 142 N.E. 881 (1924).

A person who "engaged in the business of a practicing lawyer" in this state without being admitted to the bar of a court specified in the preceding section cannot recover compensation for his services. *Harris v. Clark*, 81 Ind. App. 494, 142 N.E. 881 (1924).

Contempt.

The Supreme Court has no jurisdiction over one who is not a member of the bar, and who is practicing law, to punish him or it for contempt, except for some act which affects or interferes with the functioning of such court. *State ex rel. Indianapolis Bar Ass'n v.*

Fletcher Trust Co., 211 Ind. 27, 5 N.E.2d 538 (1937), overruled on other grounds, *In re Perrello*, 260 Ind. 26, 291 N.E.2d 698 (1973).

Lay Counsel.

There is no constitutional right to representation by lay counsel. *Terpstra v. F & M Bank*, 483 N.E.2d 749 (Ind. App. 1985).

If unlicensed counsel were allowed to sit at the counsel table and offer him legal advice, then "counsel" would be in violation of the state statute prohibiting the unauthorized practice of law, and the judge would be aiding a nonlawyer in the unauthorized practice of law. *Terpstra v. F & M Bank*, 483 N.E.2d 749 (Ind. App. 1985).

Practice of Law.

Under this section, the "practice of law" includes the giving of legal advice and counsel as to legal matters, and the preparation of legal instruments and contracts by which legal rights are secured, as well as attending to legal matters pending in court. *Fink v. Peden*, 214 Ind. 584, 17 N.E.2d 95 (1938).

Trust Company, Practice of Law.

Information filed by bar association charging a trust company with violation of the statute regulating the practice of law by the preparation of wills for a valuable consideration through its employees who have been duly admitted to practice law, and the performing of such services for valuable consideration is an attempt to charge the respondent with criminal contempt. *State ex rel. Indianapolis Bar Ass'n v. Fletcher Trust Co.*, 211 Ind. 27, 5 N.E.2d 538 (1937), overruled on other grounds, *In re Perrello*, 260 Ind. 26, 291 N.E.2d 698 (1973).

Collateral References. Collection agency operation as unauthorized practice of law. 27 A.L.R.3d 1152.

Debt adjustment business as practice of law. 95 A.L.R.2d 1354.

Law clerks' activities as illegal practice of law. 13 A.L.R.3d 1137.

Licensing requirements, single or isolated transactions, as falling within their provisions. 93 A.L.R.2d 90.

Property title examination activities by

lending institutions, insurance companies or title and abstract companies as illegal practice of law. 85 A.L.R.2d 184.

Public service commission representation as involving practice of law. 13 A.L.R.3d 812.

Real estate agents, brokers, or managers drafting or filling in blanks in printed forms of instruments relating to land, as constituting practice of law. 53 A.L.R.2d 788.

Sale of books or forms designed to enable layman to achieve legal results without assis-

tance of attorney as unauthorized practice of law. 71 A.L.R.3d 1000.

Stock or security broker activities as constituting unauthorized practice of law. 34 A.L.R.3d 1305.

Tax matters services as practice of law. 9 A.L.R.2d 797.

Trust company's acts as fiduciary as practice of law. 69 A.L.R.2d 404.

Workmen's compensation claim processing or case preparation as practicing law. 2 A.L.R.3d 724.

33-1-5-2. [Repealed.]

Compiler's Notes. This section, which provided a penalty for violations of this chap-

ter, was repealed by Acts 1978, P.L. 2, § 3308. Penalty provisions now appear in IC 33-1-5-1.

33-1-5-3. Burden of proof as to admission. — In all prosecutions under this chapter, it shall not be necessary for the state to prove that the defendant has not been so admitted as an attorney-at-law, but the burden of proving such admission shall be on the defendant. [Acts 1913, ch. 347, § 3, p. 940; 1981, P.L. 272, § 2.]

NOTES TO DECISIONS

Proof of Identity.

While an attorney is an officer of the court, and the court knows its own officers, the identity of the defendant as the party by the

same name who is a member of the bar must be proved. *Harris v. Clark*, 81 Ind. App. 494, 142 N.E. 881 (1924).

CHAPTER 6

TERM AND VACATION TIME OF ALL COURTS ABOLISHED

SECTION.

33-1-6-1. Term of court to be calendar year.

33-1-6-2. Two or more courts in circuit — Duties of judge.

33-1-6-3. Control of court over its judgments.

SECTION.

33-1-6-4. Period in lieu of statutory time fixed by term of court.

33-1-6-5. Setting cases for trial — Notice to attorneys.

33-1-6-1. Term of court to be calendar year. — The term time and vacation time, as defined on December 31, 1967, of all courts of the state of Indiana are hereby abolished. The term of court for all courts shall be the calendar year and the judges of such courts shall have the same power to act in all matters and proceedings through the entire calendar year as such judges had prior to January 1, 1968 in term time. [Acts 1967, ch. 141, § 1; 1981, P.L. 272, § 3.]

Cross References. Term prolonged to finish trial, IC 33-1-2-1.

Time fixed by term of court, sixty-day period substituted, IC 33-1-6-4.

Trial courts always open and terms of court shall not be recognized, Rule TR. 72.

Cited: *State v. Collier*, 165 Ind. App. 239, 48 Ind. Dec. 129, 331 N.E.2d 784 (1975); *Hughes v. State*, 179 Ind. App. 336, 67 Ind. Dec. 267, 385 N.E.2d 461 (1979).

NOTES TO DECISIONS

Vacation of Judgment.

Where the intent of the trial court was expressed in its October oral findings and the trial court later found that its December writ-

ten judgment did not conform to those oral findings, it was justified in vacating that judgment and substituting a new written order consistent with its oral findings. *Town of*

Vacation of Judgment. (Cont'd)

St. John v. Home Bldrs. Ass'n, 428 N.E.2d 1299 (Ind. App. 1981).

33-1-6-2. Two or more courts in circuit — Duties of judge. — Where a judicial circuit consists of two (2) or more courts, the judge thereof shall divide his time and the attendance in each court as the business of same requires. [Acts 1967, ch. 141, § 2.]

33-1-6-3. Control of court over its judgments. — All courts shall retain power and control over their judgments for a period of ninety (90) days after the rendering thereof in the same manner and under the same conditions as they have heretofore retained such power and control during the term of court in which the judgments were rendered. [Acts 1967, ch. 141, § 3.]

Res Gestae. Rules, Ruling for the Trial Lawyer, 39 (No. 4) Res Gestae 27 (1995).

Cited: Matherly v. Matherly, 457 N.E.2d 220 (Ind. 1983); Stevenson v. State, 164 Ind. App. 199, 47 Ind. Dec. 1, 327 N.E.2d 621 (1975); Hammond v. Beiriger, 164 Ind. App.

275, 47 Ind. Dec. 110, 328 N.E.2d 466 (1975); M.R. ex rel. Ratliff v. Meltzer, 487 N.E.2d 836 (Ind. App. 1986); State v. Eaton, 581 N.E.2d 956 (Ind. App. 1991); Chapin v. Hulse, 599 N.E.2d 217 (Ind. App. 1992).

NOTES TO DECISIONS

ANALYSIS

In general.
Applicability.
Jurisdiction.
Purpose of control.

In General.

Fact that a court retains power and control over its judgments for 90 days after they are rendered under this section and for 60 days under IC 33-1-6-4 does not relieve the trial court from following the Indiana Rules of Procedure in changing, modifying, or setting aside those judgments. Davidson v. American Laundry Mach. Div., 431 N.E.2d 546 (Ind. App. 1982).

A trial court's jurisdiction over its judgments ceases after 90 days (except under limited circumstances, such as where child custody and child support are involved). Arsenal Sav. Ass'n v. Westfield Lighting Co., 471 N.E.2d 322 (Ind. App. 1984).

The 90-day limit is absolute, and a trial judge's attempt to retain control over his judgment beyond the statutorily imposed 90-day limit is ineffectual. Pettiford v. State, 504 N.E.2d 324 (Ind. App. 1987).

Under this section a trial court retains jurisdiction over its judgment for 90 days, but the statute may have been superseded by TR. 52(B) and TR. 59(B) and (C). Masterson v. State, 511 N.E.2d 499 (Ind. App. 1987).

A trial court retains jurisdiction over its judgment for 90 days from the time it is

rendered. During that time it retains broad powers to correct, modify, or vacate its judgment, upon a showing of good cause. An uncorrected error of law is such cause. Astral Elec. Co. v. Bob Wells Constr. Co., 538 N.E.2d 986 (Ind. App. 1989).

Applicability.

When the parties have agreed that the time limit of Rule TR. 53.3(A) shall not apply, this section does not operate to deprive the trial court of the power to rule on a motion to correct errors. Anderson v. Horizon Homes, Inc., 644 N.E.2d 1281 (Ind. App. 1995).

Jurisdiction.

It was proper for trial judge, having first granted each of the parties a divorce on the complaint and cross-complaint, to change the record, less than 90 days after rendering judgment and before the motion to correct errors was filed, and grant the wife an absolute divorce from the husband and deny his cross-complaint. Jackman v. Jackman, 156 Ind. App. 27, 294 N.E.2d 620, 36 Ind. Dec. 70 (1973).

Where an order for litigation expenses and attorney's fees was entered against the plaintiff 149 days after the entry of a final divorce decree for the defendant, the plaintiff's motion to correct errors was not sufficiently specific to present the jurisdictional issue as the expiration of the time during which the court can amend a judgment does not deprive

Jurisdiction. (Cont'd)

the court of subject matter jurisdiction and the question as to whether there was jurisdiction over a particular case was waived when not timely raised. *Farley v. Farley*, 157 Ind. App. 385, 300 N.E.2d 375, 38 Ind. Dec. 257 (1973).

The time limitation provision of the statute is no bar to the exercise of an inherent power which a court possesses to make such orders and to issue such writs as may be necessary and essential to carry a previous judgment into effect and render it binding and opera-

tive. *Wilson v. Wilson*, 169 Ind. App. 530, 349 N.E.2d 277, 53 Ind. Dec. 304 (1976).

Purpose of Control.

Courts' powers to act during the 90-day period following rendition of judgment although the same as during term time before its abolition, did not sanction judicial acts solely for the accommodation of parties or by the whim or caprice of the judge. *Wadkins v. Thornton*, 151 Ind. App. 380, 279 N.E.2d 849, 29 Ind. Dec. 630 (1972).

33-1-6-4. Period in lieu of statutory time fixed by term of court. —

Wherever, in any statute, rule or order, a period of time is described or fixed by a term of court, a period of sixty (60) days for the purposes of time limitation only shall be substituted in lieu of a term of court. [Acts 1967, ch. 141, § 4.]

Cited: *Matherly v. Matherly*, 457 N.E.2d 220 (Ind. 1983).

NOTES TO DECISIONS**In General.**

The fact that a court retains power and control over its judgments under IC 33-1-6-3 and this section does not relieve the court

from following the Indiana Rules of Procedure in changing, modifying, or setting aside those judgments. *Davidson v. American Laundry Mach. Div.*, 431 N.E.2d 546 (Ind. App. 1982).

33-1-6-5. Setting cases for trial — Notice to attorneys. — For the purpose of the setting for trial of cases at issue and for discharge of rules upon which time has run, the judge shall either:

- (1) fix regular periods for setting cases not exceeding an elapse of more than one hundred twenty (120) days between such periods, or
- (2) set each by a docket sheet entry, on a day certain, with notice either in person or by mail to attorneys of record of such setting. [Acts 1967, ch. 141, § 5.]

CHAPTER 7**OFFICE OF PUBLIC DEFENDER CREATED****SECTION.**

- 33-1-7-1. Appointment by Supreme Court.
 33-1-7-2. Representation of persons confined in state penal facilities or committed to department of correction.
 33-1-7-3. Seal of office — Power to take acknowledgments.

SECTION.

- 33-1-7-4. Compensation — Office, expenses and equipment.
 33-1-7-5. Transcripts of proceedings — Authority to stipulate facts.
 33-1-7-6. Expense claims approved by Supreme Court.

33-1-7-1. Appointment by Supreme Court. — There is hereby created the office of public defender. The public defender shall be appointed by the Supreme Court of the state of Indiana to serve at the pleasure of said court, for a term of four (4) years. He shall be a resident of the state of Indiana, and

a practicing lawyer of this state for at least three (3) years. The Supreme Court is authorized to give such tests as it may deem proper to determine the fitness of any applicant for appointment. [Acts 1945, ch. 38, § 1, p. 81.]

Cross References. Poor defendants, when public defender required to furnish counsel, IC 33-9-11-1 — IC 33-9-11-6.

Post conviction remedies, duties, Rule P.C. 1, § 9.

Indiana Law Journal. An Indigent Criminal Seeks an Appeal, 36 Ind. L.J. 237.

Appellate Representation of Indigents in Indiana, 50 Ind. L.J. 154.

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

Cited: McCrary v. Indiana, 364 U.S. 277, 80 S. Ct. 1410, 4 L. Ed. 2d 1706 (1960).

NOTES TO DECISIONS

ANALYSIS

In general.

Purpose of statute.

In General.

Indiana has taken cognizance of persons in penal institutions of the state who do not have property or funds to employ counsel and has employed a public defender to give legal advice and legal attention to any proper claim they may have. State ex rel. Sweet v. Hancock, 223 Ind. 701, 64 N.E.2d 294 (1946).

Purpose of Statute.

The purpose of this statute is to provide legal aid at public expense for those who voluntarily seek and otherwise cannot obtain the advice and assistance of a competent attorney. State ex rel. Fulton v. Schannen, 224 Ind. 55, 64 N.E.2d 798 (1946).

This state provides a public defender for the purpose of representing a petitioner without funds, where there is a meritorious ground for an appeal. Campbell v. State, 241 Ind. 702, 169 N.E.2d 604 (1960); State ex rel. Bullard v. Reeves, 241 Ind. 701, 169 N.E.2d 607 (1960).

Collateral References. Relief available for violation of right to counsel at sentencing in state criminal trial. 65 A.L.R.4th 183.

33-1-7-2. Representation of persons confined in state penal facilities or committed to department of correction. — (a) The state public defender shall represent any person confined in any penal facility of this state or committed to the department of correction due to a criminal conviction or delinquency adjudication who is financially unable to employ counsel, in any postconviction proceeding testing the legality of his conviction, commitment, or confinement, if the time for appeal has expired.

(b) The state public defender shall also represent any person committed to the department of correction due to a criminal conviction or delinquency adjudication who is financially unable to employ counsel, in proceedings before the department of correction or parole board, if the right to legal representation is established by law.

(c) This section does not require the state public defender to pursue a claim or defense that is not warranted under law and cannot be supported by a good faith argument for an extension, modification, or reversal of law, or that for any other reason is without merit.

(d) This section does not prohibit an offender from proceeding on his own behalf or otherwise refusing the services of the state public defender. [Acts 1945, ch. 38, § 2, p. 81; 1979, P.L. 120, § 9; 1982, P.L. 190, § 1.]

Cross References. Criminal appeals, extension of time and submission of appeal, Rule CR. 19, 20.

Post-conviction relief, belated appeal, Rule P.C. 2.

Cited: *Sutton v. Lash*, 576 F.2d 738 (7th Cir. 1978); *Buise v. Hudkins*, 584 F.2d 223 (7th Cir. 1978), cert. denied, 440 U.S. 916, 99 S. Ct. 1234, 59 L. Ed. 2d 466 (1979).

NOTES TO DECISIONS

ANALYSIS

In general.
Additional duties.
Discretion.
Post-conviction petitions.
Post-conviction proceedings.
Refusal to accept representation.
Refusal to represent.
Time for appeal expired.
Writ of error coram nobis (abolished).

In General.

The trial court had no duty to provide an attorney at public expense and order a transcript for a prisoner, after the time for appeal had expired, so that he could present his claim that he had been wronged by perjured testimony, since the services of the public defender and the right to transcripts and other records provided by this act were available to him. *State ex rel. Lake v. Bain*, 225 Ind. 505, 76 N.E.2d 679 (1948); *State ex rel. Casey v. Murray*, 231 Ind. 74, 106 N.E.2d 911 (1952); *Hamilton v. Baker*, 234 Ind. 283, 126 N.E.2d 12 (1955); *Davenport v. Dowd*, 237 Ind. 703, 146 N.E.2d 247 (1957); *Horton v. State*, 239 Ind. 446, 158 N.E.2d 288 (1959); *Jackson v. State*, 241 Ind. 700, 169 N.E.2d 128 (1960); *Willoughby v. State*, 242 Ind. 183, 167 N.E.2d 881 (1960), cert. denied, 374 U.S. 832, 83 S. Ct. 1876, 10 L. Ed. 2d 1055 (1963).

Marion Circuit Court has no authority to grant prisoner in state penitentiary an appeal as a pauper since such duties are to be performed by the public defender. *Petillo v. State*, 234 Ind. 385, 126 N.E.2d 895, cert. denied, 350 U.S. 918, 76 S. Ct. 205, 100 L. Ed. 804 (1955).

Where indigent inmate of state prison wishes to raise questions of error not raised at time of trial the state has provided that it is the duty of the public defender to prosecute such of these actions as are meritorious and former Supreme Court Rule 2-40A (now Rule P.C. 1, § 1) provides proceedings whereby such representation may be secured through judicial review of public defender's exercise of discretion. *State ex rel. Ross v. Lake Criminal Court*, 246 Ind. 603, 209 N.E.2d 30, 6 Ind. Dec. 90 (1965).

Additional Duties.

The duties of the public defender are prescribed by law, and such duties do not include handling of appeals in cases where the trial

court still has jurisdiction to appoint another attorney to represent the appellant if, after due consideration of the attendant facts and circumstances, such action is deemed proper. *Lawson v. State*, 121 N.E.2d 721 (Ind. 1954).

This statute sets out the minimum duties of the public defender but the Supreme Court may add such duties as are necessary in order to make him an effective instrument for handling post-conviction remedies. *In re Baxter*, 254 Ind. 1, 252 N.E.2d 807, 19 Ind. Dec. 643 (1969).

Discretion.

The Supreme Court is not required to direct the discharge of the duties of the office of public defender in which the public defender must exercise his own discretion. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946).

The public defender properly refused to undertake any service for a prisoner where such prisoner had had large sums of money in his possession in the prison, amounting at one time to \$3,000. *Sweet v. State*, 226 Ind. 566, 81 N.E.2d 679 (1948).

The public defender is not compelled in every case to represent everyone applying for his services who is without funds after the time for appeal has expired. Such official has discretion depending upon whether he finds there is any merit in the applicant's complaint. *Morphew v. State*, 239 Ind. 705, 156 N.E.2d 781, cert. denied, 360 U.S. 921, 79 S. Ct. 1441, 3 L. Ed. 2d 1536 (1959); *Von Hagel v. State*, 568 N.E.2d 1014 (Ind. App. 1990).

Post-Conviction Petitions.

The public defender is not obligated to raise on appeal every issue the petitioner requests be raised. Where an issue is not the proper subject for post-conviction relief or is deemed frivolous, the public defender's office need not raise it on appeal. *Music v. State*, 489 N.E.2d 949 (Ind. 1986).

This section and Post-Conviction Rule 1, § 9 prohibit the judge from appointing counsel outside the office of the public defender to represent an indigent petitioner in a post-conviction proceeding. *Medlock v. State*, 547 N.E.2d 884 (Ind. App. 1989); *Von Hagel v. State*, 568 N.E.2d 1014 (Ind. App. 1990).

The filing of a post-conviction relief petition, even in a capital case, does not require a particular expertise in the trying of a capital

Post-Conviction Petitions. (Cont'd)

case in its inception, but rather requires a degree of skill in the manner in which post-conviction relief is presented to the trial court. *Wallace v. State*, 640 N.E.2d 374 (Ind. 1994), cert. denied, 514 U.S. 1115, 115 S. Ct. 1972, 131 L. Ed. 2d 861 (1995).

Post-Conviction Proceedings.

Although post-conviction proceedings are civil in nature, a court would have the power to appoint attorneys to defend any indigent persons. *Fair v. Givan*, 509 F. Supp. 1086 (N.D. Ind. 1981).

The attorney general of Indiana and chief justice of the Supreme Court of Indiana acted within their constitutional and statutory authority when they refused to allow an inmate to represent another inmate in post-conviction proceedings. *Fair v. Givan*, 509 F. Supp. 1086 (N.D. Ind. 1981).

Even though the trial court erroneously appointed a local pauper counsel for petitioner during post-conviction relief hearing instead of a state public defender, the error was not reversible because petitioner could not prove that he was denied effective assistance of counsel. *Murphy v. State*, 477 N.E.2d 266 (Ind. 1985).

Neither the due process clause nor the guarantee of equal protection in the United States Constitution require a state to appoint counsel for indigent prisoners seeking state post-conviction relief. *Von Hagel v. State*, 568 N.E.2d 1014 (Ind. App. 1990).

Where an 11-year delay of a post-conviction petition in state courts had been caused partially by petitioner's own actions and partially by the uninspired performance of his post-conviction counsel, which included two deputy public defenders and three court-appointed outside counsel, the delay could not be attributed to the state for purposes of rendering Indiana's state process ineffective under 28 U.S.C. § 2254(b), and petitioner had to exhaust his state remedies before bringing a habeas action in federal court. Since the actions of his deputy public defenders and appointed counsel, which caused the delay, did not constitute state action, there was no constitutional violation of due process involved in the delay. *Sceifers v. Trigg*, 46 F.3d 701 (7th Cir. 1995), cert. denied, 516 U.S. 853, 116 S. Ct. 152, 133 L. Ed. 2d 97 (1995), reh'g denied, 516 U.S. 1068, 116 S. Ct. 757, 133 L. Ed. 2d 703 (1996).

Refusal to Accept Representation.

Where a convict chooses to represent himself rather than to avail himself of representation of the public defender, he must accept the handicaps that result from his incarceration. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946).

Neither the Supreme Court nor any other court should order the public defender to represent a convict who declines to avail himself of such representation and chooses to be his own counsel. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946).

Refusal to Represent.

Failure of the public defender to assist prisoner in perfecting an appeal from a denial of a petition for writ of error coram nobis (since abolished) because he did not believe the prisoner's claim had merit was a denial of the equal protection clause of U.S. Const., Amend. 14. *Lane v. Brown*, 372 U.S. 477, 83 S. Ct. 768, 9 L. Ed. 2d 892 (1963). See Rule P.C. 1.

Under the papers filed and the showing made in the Supreme Court, the court had no jurisdiction to act where public defender refused to take any action in accused's behalf. *Morphew v. State*, 239 Ind. 705, 156 N.E.2d 781, cert. denied, 360 U.S. 921, 79 S. Ct. 1441, 3 L. Ed. 2d 1536 (1959).

Although it is duty of public defender to represent indigent prisoners who have not timely prosecuted appeal from their judgments of conviction, public defender may refuse to represent prisoner if, after diligent inquiry, he finds no grounds upon which in good conscience he can predicate judicial review of judgment of conviction. However, this exercise of discretion by public defender is not absolute and prisoner is entitled to have public defender's determination of nonexistence of merit on which to base an appeal subject to judicial scrutiny of this court. In *re Sowders*, 246 Ind. 554, 207 N.E.2d 629, 5 Ind. Dec. 535 (1965).

Time for Appeal Expired.

The "time for appeal" is the time allowed in the course of ordinary procedure. *State ex rel. Walker v. Youngblood*, 225 Ind. 375, 75 N.E.2d 551 (1945).

The filing of a motion for new trial, with the permission of the court, after the expiration of the statutory time for filing and time for taking an appeal had expired, extended the time for appeal for the statutory period after the ruling on the motion, but did not take defendant out of this act, notwithstanding its provisions for representation by the public defender "after time for appeal" shall have expired. The trial court would not be mandated to appoint another attorney for defendant and furnish bill of exceptions and transcript, since the public defender can stipulate facts in lieu of a bill of exceptions, or obtain bill of exceptions, if satisfactory stipulation is impossible, at the state's expense. *State ex rel. Walker v. Youngblood*, 225 Ind. 375, 75 N.E.2d 551 (1945).

Where appellant was in prison, trial court

Time for Appeal Expired. (Cont'd)

properly denied petition to appeal as a poor person, time for appeal having expired; appellant's method of procedure should have been under this law. *Woodson v. Criss*, 233 Ind. 699, 121 N.E.2d 650 (1954).

Where a prisoner's time for appeal from the original judgment of conviction has expired he must proceed under the public defender act in seeking a pauper appeal from dismissal of his petition for writ of error coram nobis (since abolished), so that an original action pro se "for leave to appeal in forma pauperis" would be denied under such circumstances. *Harris v. State*, 235 Ind. 700, 132 N.E.2d 617 (1956). See Rule P.C. 1.

Writ of Error Coram Nobis (Abolished).

A prisoner of the state of Indiana under sentence on a plea of guilty, who claims his detention is illegal because of denial of a constitutional right or of a denial of due process by the court of Indiana which pronounced sentence, must file his petition for writ of error coram nobis (since abolished) in the committing court and, if there denied, appeal to the Supreme Court of Indiana before he has exhausted his state remedy. *Posey v. Overlade*, 145 F. Supp. 772 (N.D. Ind. 1956). See presently Rules TR, 60 and P.C. 1.

The public defender may, with the consent of the court, appear as amicus curiae in a proceeding brought by a prisoner pro se seeking a writ of error coram nobis (since abolished), even over the objection of the petitioner, and it is not improper for the court to give the public defender notice. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946). (Writs of error coram nobis were abolished by amendment to former Rules 2-40 and 2-40A and now by Rule TR. 60. See also Rule P.C. 1.)

Defendant petitioner upon denial of petitions for error coram nobis (since abolished) and habeas corpus seeks an appeal in both said proceedings pro se in forma pauperis and asks the court to order a certified copy of the record be prepared for the purpose of the appeal but since the public defender is not required to appeal all cases in which inmates of penal institutions consider error was committed in their respective cases and since he must be granted wide discretion as to whether matters complained of present any appealable issue, where refusal of public defender did not constitute a dereliction of his duty to prosecute an appeal, Supreme Court

would not order preparation of such certified copy of record. *Jackson v. Reeves*, 238 Ind. 708, 153 N.E.2d 604 (1958). See Rule P.C. 1.

If a court in which a prisoner has filed a petition for writ of error coram nobis (since abolished) pro se desires that notice be given to the public defender, it should be mailed directly to him, not relayed through the Supreme Court nor through the attorney general whose office has no connection with that of the public defender. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946). See Rule P.C. 1.

Where convict is represented in a coram nobis proceeding (since abolished) by the public defender he gains not only the benefit of competent counsel, but also, at state expense, when the public defender deems it advisable, transcripts necessary for appeal, but where he is not so represented and chooses to represent himself he limits his evidence in the hearing to such affidavits as he may obtain from his place of imprisonment, and he may be present at the hearing only upon order made in the sound discretion of the judge. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946). See Rule P.C. 1.

The Supreme Court will not open the prison doors to enable a convict to conduct in person a coram nobis proceeding (since abolished) on claims he is not willing to submit to the public defender, a skilled attorney paid by the state whose sole duty is to represent him in any matter in which he may assert he is unlawfully or illegally imprisoned. *State ex rel. Fulton v. Schannen*, 224 Ind. 55, 64 N.E.2d 798 (1946).

A person convicted of a crime was not entitled to have the trial court furnish to him without cost either counsel or a bill of exceptions for use upon an appeal in connection with a proceeding for writ of error coram nobis (since abolished), since the state has provided a public defender to represent him and obtain a bill of exceptions and transcript in proper cases. *State ex rel. Wheelock v. Wiles*, 224 Ind. 239, 78 N.E.2d 432 (1946); *State ex rel. DeLong v. Bain*, 224 Ind. 240, 78 N.E.2d 431 (1946). See Rule P.C. 1.

Filing "praecipe for writ of error coram nobis" with Supreme Court, if intended as attempt to compel clerk of trial court to furnish transcript or certified copies for that purpose without expense to petitioner is in error since this is duty of public defender. *Jackson v. Zandstra*, 234 Ind. 387, 127 N.E.2d 103 (1955).

33-1-7-3. Seal of office — Power to take acknowledgments. — The public defender shall be provided with a seal of his office on which shall appear the words "Public Defender, State of Indiana." The public defender shall have the power to take acknowledgments, and administer oaths, and

do all other acts now authorized by law for notary publics, Provided, each of said acts shall be attested by his official seal. [Acts 1945, ch. 38, § 3, p. 81.]

33-1-7-4. Compensation — Office, expenses and equipment. — The public defender shall be paid an annual salary to be fixed by the Supreme Court of this state. He may, with the consent of said court, appoint or employ such deputies, stenographers or other clerical help as may be required to discharge his duties at compensation to be fixed by the court. He shall be provided with an office at a place to be located and designated by the Supreme Court, and he shall be paid his actual necessary and reasonable traveling expenses, including cost of food and lodging when away from the municipality in which his office is located on business of the office of the public defender, and he shall be provided with office furniture, fixtures and equipment, books, stationery, printing services, postage and supplies. [Acts 1945, ch. 38, § 4, p. 81; 1951, ch. 132, § 1.]

33-1-7-5. Transcripts of proceedings — Authority to stipulate facts. — The public defender may order on behalf of any prisoner he represents a transcript of any court proceeding, including evidence presented, had against any prisoner, and depositions, if necessary, at the expense of the state, but the public defender shall have authority to stipulate facts contained in the record of any court, or the substance of testimony presented or evidence heard involving any issue to be presented on behalf of any prisoner, without the same being fully transcribed. [Acts 1945, ch. 38, § 5, p. 81.]

Cross References. Recording machines, transcripts made from authorized, Rule CR. 5.

Transcript, statutes applicable, Rule TR. 74.

Indiana Law Review. Effectiveness of Counsel in Indiana: An Examination of Appellate Standards, 7 Ind. L. Rev. 674.

Cited: Sutton v. Lash, 576 F.2d 738 (7th Cir. 1978).

NOTES TO DECISIONS

ANALYSIS

Discretion.
Exclusive remedy.
Mandamus.
Transcript.

Discretion.

The public defender is under no obligation or authority to represent persons convicted of crimes when there is no merit to a belated motion for a new trial, a belated appeal or other post-conviction remedy. Willoughby v. State, 242 Ind. 183, 177 N.E.2d 465 (1960), cert. denied, 374 U.S. 832, 83 S. Ct. 1876, 10 L. Ed. 2d 1055 (1963). But see Lane v. Brown, 372 U.S. 477, 83 S. Ct. 768, 9 L. Ed. 2d 892 (1963).

Exclusive Remedy.

Failure to permit an appeal from hearing denying relief to prisoner applying for writ of coram nobis because public defender refused to appeal denied prisoner his constitutional rights. Lane v. Brown, 372 U.S. 477, 83 S. Ct. 768, 9 L. Ed. 2d 892 (1963).

Petitioners for writ of error coram nobis (since abolished) may obtain transcripts of court records at public expense by availing themselves of the services of the public defender, but not otherwise. Bratton v. State, 235 Ind. 427, 134 N.E.2d 218 (1956). See Rule P.C. 1.

In Indiana appeals are prosecuted to appellate tribunals in the manner provided by our code, and not by writ of certiorari. Posey v. Murray, 239 Ind. 697, 154 N.E.2d 885 (1959).

Exclusive Remedy. (Cont'd)

Since the state has created the office of public defender to represent pauper prisoners after the regular time for appeal has expired, the prisoner is not entitled to a transcript of the record or the services of other counsel at public expense, and the record at public expense must be obtained through the public defender. *Willoughby v. State*, 242 Ind. 183, 167 N.E.2d 881 (1960), cert. denied, 374 U.S. 832, 83 S. Ct. 1876, 10 L. Ed. 2d 1055 (1963).

Mandamus.

Original action for mandamus to compel trial judge after time for appeal had passed, to furnish costs for transcript and bill of exceptions in petition for writ of error coram nobis should be filed through the public defender who is empowered to act for petitioner if cause is meritorious. *Hamilton v. Baker*, 234 Ind. 283, 126 N.E.2d 12, cert. denied, 349 U.S. 968, 75 S. Ct. 904, 99 L. Ed. 1289 (1955).

Where petition for review of conviction may be treated as petition for belated appeal, in view of the fact that petition was not accompanied by certified copy of record and a transcript of such proceeding could have been provided at public expense upon request of public defender, the petition must be dismissed. *Posey v. Murray*, 239 Ind. 697, 154 N.E.2d 885 (1959).

Transcript.

Where an indigent desired to take an appeal from an adverse decision conviction remedy and he first had to obtain the assistance of the public defender and was not entitled to a transcript of the record at public expense unless he obtained same through the public defender who was given wide discretion in deciding whether the matters complained of presented any appealable issue and where public defender declined, transcript was denied and indigent was thereby denied appellate review since Supreme Court requires transcript to permit it to acquire jurisdiction, indigent was prevented from obtaining an effective appellate review solely because he was unable to purchase a transcript of the record and thus he was denied equal protection of the law. *United States ex rel. Brown v.*

Lane, 302 F.2d 537 (7th Cir. 1962), opinion aff'd, judgment vacated and remanded, 372 U.S. 477, 83 S. Ct. 768, 9 L. Ed. 2d 892 (1963).

Though by statute a transcript of any court proceedings may be furnished to the public defender at state expense where he requests it, there is no authority by which the Supreme Court in response to an "affidavit of paupership and praecipe" filed by a prisoner himself can furnish or require to be furnished records and papers of his conviction trial. *Burnett v. State*, 235 Ind. 698, 132 N.E.2d 458 (1956).

Where services of the public defender have been rejected by the defendant, who wishes to act as his own counsel, he has no absolute right to a transcript of the record at public expense, but may only procure the same at public expense through office of public defender when latter deems it advisable. *State ex rel. Fryer v. Murray*, 236 Ind. 704, 141 N.E.2d 700 (1957).

If an accused is without funds to procure a transcript or the services of an attorney, which he desires, he should contact the public defender of the state whose services are available to persons without funds regarding matters in which such accused may assert he is unlawfully imprisoned, after his time for appeal has expired. *State ex rel. Quarles v. Davie*, 237 Ind. 704, 146 N.E.2d 419 (1957).

The public defender is not authorized to order a transcript at public expense for prisoners whom he does not represent. *Willoughby v. State*, 242 Ind. 183, 167 N.E.2d 881 (1960), cert. denied, 374 U.S. 832, 83 S. Ct. 1876, 10 L. Ed. 2d 1055 (1963).

A transcript of the record in a criminal conviction will not be furnished an indigent defendant unless the application is made by the public defender; and such order must not be made frivolously, or without proceedings having been commenced for an appeal or review. *Weaver v. State*, 244 Ind. 314, 192 N.E.2d 634, 2 Ind. Dec. 112 (1963).

Where a previously furnished transcript, filed in the office of the clerk of the Supreme Court, is available on application and for good cause shown, another will not be furnished an indigent criminal defendant whose conviction has been affirmed. *Weaver v. State*, 244 Ind. 314, 192 N.E.2d 634, 2 Ind. Dec. 112 (1963).

33-1-7-6. Expense claims approved by Supreme Court. — All claims for salary or other expenses authorized by this chapter shall be allowed and approved by the Supreme Court. There is hereby appropriated annually out of funds of the state not otherwise appropriated a sufficient amount to pay salaries and expenses authorized by this chapter. [Acts 1945, ch. 38, § 6, p. 81; 1981, P.L. 272, § 4.]

CHAPTER 8

ANNUAL APPROPRIATION FOR PUBLIC DEFENDER

33-1-8-1. [Repealed.]

Compiler's Notes. This section, concerning an appropriation for public defenders, was repealed by Acts 1972, P.L. 13, § 52.

CHAPTER 9

COURT COSTS

33-1-9-1 — 33-1-9-4. [Repealed.]

Compiler's Notes. This chapter, concerning court costs, was repealed by Acts 1978, P.L. 2, § 3308, Acts 1982, P.L. 181, § 16 and P.L.171-1984. For present law, see IC 33-19-3.

CHAPTER 10

FEE BILLS

33-1-10-1 — 33-1-10-7. [Repealed.]

Compiler's Notes. This chapter, concerning fee bills, was repealed by Acts 1980, P.L. 8, § 153 and P.L.171-1984, § 80.

CHAPTER 11

CLERKS' COSTS

33-1-11-1 — 33-1-11-7. [Repealed.]

Compiler's Notes. This chapter, concerning clerks' costs, was repealed by Acts 1981, P.L. 272, § 146 and P.L.171-1984, § 80. For present provisions, see IC 33-19-3.

CHAPTER 12

COURT ADMINISTRATORS IN CERTAIN COUNTIES

SECTION.

33-1-12-1. Creation of position.

33-1-12-2. Appointment of administrators.

33-1-12-3. Requirement of full time to administrator's duties.

33-1-12-4. Duties and salaries of court administrators.

SECTION.

33-1-12-5. Appointment of additional personnel — Salaries.

33-1-12-6. Applicability of chapter.

33-1-12-1. Creation of position. — The position of court administrator may be created by a majority vote of the judges in section 2 [IC 33-1-12-2] of this chapter, in every county having a population according to the last United States decennial census of more than one hundred thousand (100,000) persons. [IC 33-1-12-1, as added by Acts 1975, P.L. 302, § 1.]

Compiler's Notes. According to the 1990 federal census, counties containing more than

100,000 population include: Allen, Delaware, Elkhart, Hamilton, Lake, LaPorte, Madison,

Marion, Monroe, Porter, St. Joseph,
Tippecanoe, Vanderburgh and Vigo.

33-1-12-2. Appointment of administrators. — The court administrator shall be appointed by and serve at the pleasure of the majority of the judges of the following courts of the county sitting in committee:

- (a) Circuit court;
- (b) Superior court;
- (c) Juvenile court;
- (d) Probate court; and
- (e) Criminal court.

[IC 33-1-12-2, as added by Acts 1975, P.L. 302, § 1.]

33-1-12-3. Requirement of full time to administrator's duties. — The court administrator shall devote full time to his official duties and may not engage in any other profession for profit. [IC 33-1-12-3, as added by Acts 1975, P.L. 302, § 1.]

33-1-12-4. Duties and salaries of court administrators. — Sitting in committee, the judges of the courts in each county listed in section 2 [IC 33-1-12-2] of this chapter shall determine the duties of the court administrator and the court administrator shall perform such administrative duties as the judges determine. The salary of the court administrator shall be determined by a majority of the judges listed in section 2 of this chapter in each county, sitting in committee, and said salary shall be paid by the county upon the order of the majority of the committee of judges. [IC 33-1-12-4, as added by Acts 1975, P.L. 302, § 1.]

33-1-12-5. Appointment of additional personnel — Salaries. — For the implementation of this chapter, the judges of the courts sitting in committee may appoint additional personnel in sufficient number so that they may be adequately served by the court administrator. The salaries of such additional personnel shall be paid by the county upon the order of the committee of judges. [IC 33-1-12-5, as added by Acts 1975, P.L. 302, § 1.]

33-1-12-6. Applicability of chapter. — This chapter does not apply to a county having a court administrator under Indiana law before July 29, 1975. [P.L.5-1988, § 162.]

CHAPTER 13

DEFINITIONS

SECTION.

33-1-13-1. Definitions.

33-1-13-1. Definitions. — As used in this title:

“Crime” means a felony or a misdemeanor.

“Felony” means a violation of a statute for which a person might be imprisoned for more than one (1) year.

“Infraction” means a violation of a statute for which a person might be fined, but not imprisoned.

“Misdemeanor” means a violation of a statute for which a person might be imprisoned, but not for more than one (1) year.

“Offense” means a felony, a misdemeanor, an infraction, or a violation of a penal ordinance. [IC 33-1-13-1, as added by Acts 1977, P.L. 313, § 1.]

NOTES TO DECISIONS

“Offense.”

An infraction is not an “offense,” in view of the more recent definition of “offense” in IC

35-41-1-19. *Horne v. State*, 572 N.E.2d 1333 (Ind. App. 1991).

CHAPTER 14

WITNESS FEES

33-1-14-1, 33-1-14-2. [Repealed.]

Compiler’s Notes. This chapter, concerning witness fees, was repealed by P.L.171-1984. For present provisions, see IC 33-19.

CHAPTER 15

COMMISSION ON COURTS

[Expires June 30, 1999]

SECTION.

- 33-1-15-1. Establishment of commission [expires pursuant to IC 33-1-15-8].
- 33-1-15-2. Members — Appointment [expires pursuant to IC 33-1-15-8].
- 33-1-15-3. Term of appointed members [expires pursuant to IC 33-1-15-8].
- 33-1-15-4. Chairman and vice chairman [expires pursuant to IC 33-1-15-8].

SECTION.

- 33-1-15-5. Salary per diem and expenses [expires pursuant to IC 33-1-15-8].
- 33-1-15-6. Staff — Employment and duties [expires pursuant to IC 33-1-15-8].
- 33-1-15-7. Duties of commission [expires pursuant to IC 33-1-15-8].
- 33-1-15-8. Expiration of chapter on June 30, 1999.

33-1-15-1. Establishment of commission [expires pursuant to IC 33-1-15-8]. — The commission on courts is established. [P.L.206-1991, § 1.]

33-1-15-2. Members — Appointment [expires pursuant to IC 33-1-15-8]. — The commission on courts is composed of the following thirteen (13) members:

- (1) The chief justice of the supreme court or a representative designated by the chief justice.
- (2) Four (4) members from the house of representatives, appointed by the speaker of the house of representatives, not more than two (2) of whom are from the same political party.
- (3) Four (4) members from the senate, appointed by the president pro tempore of the senate, not more than two (2) of whom are from the same political party.

(4) Two (2) members, not more than one (1) of whom is from the same political party, appointed by the president pro tempore of the senate as follows:

(A) One (1) member must be a sitting judge.

(B) One (1) member must be a county commissioner.

(5) Two (2) members, not more than one (1) of whom is from the same political party, appointed by the speaker of the house of representatives as follows:

(A) One (1) member must be a member of a county council.

(B) One (1) member must be a circuit court clerk.

[P.L.206-1991, § 1.]

33-1-15-3. Term of appointed members [expires pursuant to IC 33-1-15-8]. — Each appointed member of the commission on courts serves for a term of four (4) years. [P.L.206-1991, § 1.]

33-1-15-4. Chairman and vice chairman [expires pursuant to IC 33-1-15-8]. — The chairman of the legislative council shall appoint the chairman and vice chairman of the commission on courts from among the legislative members of the commission. The chairman and vice chairman:

(1) May not be members of the same political party;

(2) May not be from the same house of the general assembly; and

(3) Must be appointed from a different house of the general assembly each year. [P.L.206-1991, § 1; P.L.18-1995, § 10.]

33-1-15-5. Salary per diem and expenses [expires pursuant to IC 33-1-15-8]. — (a) Each member of the commission on courts who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(b) Each member of the commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(c) Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council. [P.L.206-1991, § 1.]

33-1-15-6. Staff — Employment and duties [expires pursuant to IC 33-1-15-8]. — (a) The legislative services agency shall employ necessary staff to carry out the administrative duties and functions of the commission on courts, including the following:

- (1) Giving notices of commission meetings and other communication services.
 - (2) Keeping records related to commission meetings, proceedings, and actions.
 - (3) Preparing the report required under section 7 [IC 33-1-15-7] of this chapter.
 - (4) Providing the detailed investigation necessary for the commission to fulfill the duties imposed under section 7 of this chapter.
 - (5) Preparing draft proposals required under section 7 of this chapter.
- (b) The legislative services agency shall not expend more than forty-eight thousand dollars (\$48,000) per year to employ the staff required under subsection (a). [P.L.206-1991, § 1.]

33-1-15-7. Duties of commission [expires pursuant to IC 33-1-15-8].

— The commission on courts shall do the following:

- (1) Review and report on all requests for new courts or changes in jurisdiction of existing courts. A request for review under this subdivision must be received by the commission not later than July 1 of each year. A request received after July 1 may not be considered unless a majority of the commission members agree to consider the request.
- (2) Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. This research may include the conduct of surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
- (3) Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The commission shall hold at least one (1) public hearing on each request presented to the commission.
- (4) Review and report on any other matters relating to court administration that the commission determines appropriate, including the following:

- (A) Court fees.
 - (B) Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - (C) Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - (D) Jury selection.
 - (E) Any other issues relating to the operation of the courts.
- (5) Submit a report before November 1 of each year to the general assembly that includes the following:

- (A) A recommendation on all requests considered by the commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
- (B) If the commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - (i) A draft of legislation implementing the changes.
 - (ii) A fiscal analysis of the cost to the state and local governments of implementing recommended changes.

- (iii) Summaries of any research supporting the recommended changes.
- (iv) Summaries of public hearings held concerning the recommended changes.
- (C) A recommendation on any issues considered by the commission under subdivision (4). [P.L.206-1991, § 1; P.L.18-1995, § 11.]

33-1-15-8. Expiration of chapter on June 30, 1999. — This chapter expires June 30, 1999. [P.L.206-1991, § 1; P.L.18-1995, § 12.]

CHAPTER 16

NOTICE TO LICENSING BODY OF INSURANCE FRAUD CONVICTION

SECTION.

- 33-1-16-1. "Governmental body" defined.
- 33-1-16-2. "License" defined.
- 33-1-16-3. "Practitioner" defined.

SECTION.

- 33-1-16-4. Notice of convictions to be provided to governing bodies.

33-1-16-1. "Governmental body" defined. — As used in this chapter, "governmental body" means any agency, a board, or a commission of the legislative, executive, or judicial branch of state government. [P.L.150-1994, § 1.]

33-1-16-2. "License" defined. — As used in this chapter, "license" means an occupational or a professional license, registration, permit, or certificate issued by a governmental body. [P.L.150-1994, § 1.]

33-1-16-3. "Practitioner" defined. — As used in this section, "practitioner" means a person who holds a license. The term includes the following:

- (1) An attorney.
- (2) A person practicing an occupation or a profession that is licensed under IC 27 or by a board referred to in IC 25-1-2-6(b). [P.L.150-1994, § 1.]

33-1-16-4. Notice of convictions to be provided to governing bodies. — If a practitioner is convicted under IC 35-43-5-4(10) of:

- (1) Insurance fraud;
- (2) An attempt to commit insurance fraud; or
- (3) Conspiracy to commit insurance fraud;

the sentencing court shall provide notice of the conviction to each governmental body that has issued a license to the practitioner. [P.L.150-1994, § 1.]

CHAPTER 17

POLITICAL ACTIVITY OF COURT EMPLOYEES

SECTION.

- 33-1-17-1. Findings of the Indiana general assembly.
- 33-1-17-2. "Court employee" defined.

SECTION.

- 33-1-17-3. Political activity of court employees.

33-1-17-1. Findings of the Indiana general assembly. — The Indiana general assembly finds that:

- (1) The right of every citizen to freely participate in political activity is inherent in the guarantee of free speech contained in Article 1, Section 9 of the Constitution of the State of Indiana, and in Amendment I to the Constitution of the United States;
- (2) The right to freely participate in political activity is guaranteed to Indiana state employees under IC 4-15-10-2;
- (3) The judiciary is not less subject to constitutional strictures against governmental interference with the free exercise of speech than are the executive and legislative branches of government; and
- (4) Employees in the judicial branch of Indiana government have the same rights as are guaranteed to all Indiana citizens. [P.L.18-1995, § 13.]

33-1-17-2. “Court employee” defined. — As used in this chapter, “court employee” means a person employed by any of the following:

- (1) The supreme court.
- (2) The court of appeals.
- (3) The tax court.
- (4) A circuit court.
- (5) A superior court.
- (6) A juvenile court.
- (7) A probate court.
- (8) A county court.
- (9) A municipal court.
- (10) A city or town court.
- (11) A small claims court.

The term does not include a judge of any of the courts listed in subdivisions (1) through (11). [P.L.18-1995, § 13.]

33-1-17-3. Political activity of court employees. — Except when on duty or acting in an official capacity and except where otherwise provided by state or federal law, a court employee may not be:

- (1) Discouraged from engaging in political activity; or
- (2) Denied the right to choose to refrain from engaging in political activity. [P.L.18-1995, § 13.]

ARTICLE 2

SUPREME COURT

CHAPTER.

1. SUPREME COURT CREATED, 33-2-1-1 — 33-2-1-8.
2. [REPEALED.]
3. EXCLUSIVE JURISDICTION TO ADMIT ATTORNEYS TO PRACTICE LAW, 33-2-3-1.

CHAPTER.

- 3.1. DISCIPLINARY PROCEEDINGS AGAINST ATTORNEYS, 33-2-3.1-1 — 33-2-3.1-3.
4. CERTIFICATION OF STATE LAW TO FEDERAL COURTS, 33-2-4-1.

CHAPTER 1

SUPREME COURT CREATED

SECTION.

- 33-2-1-1. Composition and jurisdiction.
 33-2-1-2. Seal.
 33-2-1-3. Authority.
 33-2-1-4. Oaths — Fines for contempt.

SECTION.

- 33-2-1-5, 33-2-1-6. [Repealed.]
 33-2-1-7. When judges may try cases.
 33-2-1-8. Appointment of senior judge to
 serve circuit or superior court.

33-2-1-1. Composition and jurisdiction. — The Supreme Court shall consist of five (5) judges, any three (3) of whom shall form a quorum, and shall have jurisdiction in appeals coextensive with the state. [2 R.S. 1852, ch. 1, § 1, p. 1; Acts 1872, ch. 19, § 1, p. 24.]

33-2-1-2. Seal. — The Supreme Court shall have a seal, devised by the judges thereof, a description of which, shall be recorded in the office of the secretary of state. [2 R.S. 1852, ch. 1, § 2, p. 1.]

33-2-1-3. Authority. — Such court shall have authority,

First. To frame, direct, and cause to be used, all process; to establish modes of practice which may be necessary in the exercise of its authority; and make regulations respecting the same, and cause them to be printed.

Second. To establish regulations respecting bonds required in appeals to such court; the amount of the penalties thereof; and for approving sureties thereto.

Third. To establish regulations in relation to giving notice to officers of inferior courts of the granting of stay of execution, or of supersedeas.

Fourth. To establish regulations respecting proceedings which are requisite in such court in the exercise of its authority, not specially provided for by law. [2 R.S. 1852, ch. 1, § 5, p. 1.]

Compiler's Notes. This section may be affected by Ind. Const., art. 7, § 4 as amended and the Judiciary Law of 1972 (IC 33-2.1-1-1 — IC 33-2.1-5-29).

Cross References. Clerk of Supreme Court, election, bond, term, duties, IC 33-15-1.

Composition of Supreme Court, IC 33-2.1-2-1.

Constitutional provisions as to court, Ind. Const., art. 7.

Jurisdiction of Supreme Court of Indiana, IC 33-2.1-1, IC 33-2.1-2-1, IC 33-2.1-3-1, IC 33-3-2-4; Ind. Const., art. 7, § 4; Rule AP. 4.

Maximum number of Supreme Court judges, quorum, Indiana Const., art. 7, § 2.

Salaries of Supreme Court justices, Ind. Const., art. 7, § 19, IC 33-13-12-9.

Sheriff of Supreme Court, IC 33-15-7-1 — IC 33-15-7-4.

Indiana Law Journal. Some Phases of Procedure in the Supreme and Appellate Courts of Indiana, 2 Ind. L.J. 183.

Rearranging the Indiana Judiciary, 2 Ind. L.J. 247, 293.

The Constitution and the Courts, 2 Ind. L.J. 659.

Proper Function of an Appellate Court, 5 Ind. L.J. 483.

Doctrine of the Supremacy of the Supreme Court, 6 Ind. L.J. 224.

Reform of Legal Procedure: Rulemaking Power for Courts, 6 Ind. L.J. 383.

The Supreme Court of Indiana and Federal Taxation of State Instrumentalities, 8 Ind. L.J. 476.

The Work of the Courts: A Symposium, 10 Ind. L.J. 59.

Jurisdiction of Courts, 11 Ind. L.J. 324, 429, 524.

Annulment of Marriages: An Analysis of Indiana Laws, 33 Ind. L.J. 80.

The Court v. The Legislature: Rulemaking Power in Indiana, 36 Ind. L.J. 87.

The Uniform Traffic Ticket v. Indiana Criminal Procedure: Conflict or Compatibility?, 36 Ind. L.J. 99.

NOTES TO DECISIONS

ANALYSIS

Constitutional requirements.
 Court rules.
 Judge's powers and duties.
 Jurisdiction.
 —Legislative control.
 Relief from fraud or mistake.
 Reviewing prior decisions.
 Stay of execution.

Constitutional Requirements.

The provision of the constitution that required the Supreme Court to give a written opinion upon every point arising in the record of every case, though merely directory, was to be observed, subject to such a construction as obviated the difficulties of a literal compliance. *Willetts v. Ridgeway*, 9 Ind. 367 (1857); *Bowen v. Stewart*, 128 Ind. 507, 26 N.E. 168 (1891); *Carmel Natural Gas & Imp. Co. v. Small*, 150 Ind. 427, 47 N.E. 11 (1897).

Court Rules.

Rules adopted by the Supreme Court in pursuance of laws have the force and effect of law. *Smith v. State ex rel. Hamill*, 137 Ind. 198, 36 N.E. 708, 140 Ind. 340 (1894); *State v. Van Cleave*, 157 Ind. 608, 62 N.E. 446 (1902); *State ex rel. Whitaker v. Lankford*, 158 Ind. 34, 62 N.E. 624 (1902).

The Supreme Court has power independent of legislative authority, to adopt rules for the conduct of its business. *Parkinson v. Thompson*, 164 Ind. 609, 73 N.E. 109, 3 Ann. Cas. 677 (1905); *Solimeto v. State*, 188 Ind. 170, 122 N.E. 578 (1919); *Epstein v. State*, 190 Ind. 693, 127 N.E. 441 (1920).

The legislature has no power to establish rules for the Supreme Court, nor to declare what shall constitute a sufficient brief, and when defects in a brief must be pointed out. *Solimeto v. State*, 188 Ind. 170, 122 N.E. 578 (1919); *Epstein v. State*, 190 Ind. 693, 127 N.E. 441 (1920); *Roberts v. Donahoe*, 191 Ind. 98, 131 N.E. 33 (1921).

The power of the Supreme Court to frame rules is derived from the constitution and not from a legislative act. *Epstein v. State*, 190 Ind. 693, 127 N.E. 441 (1920).

Where relator asserted that the judge presiding over a trial in which relator was the plaintiff had been disqualified by TR. 79(1)(b), which became effective while that action was pending, relator should have brought an original claim asserting disqualification before entry of final judgment in the case; and having failed to do so his remedy was no longer by way of original action in the Supreme Court but by way of appeal. *State ex rel. Renforth v. Union Circuit Court*, 267 Ind. 327, 369 N.E.2d 1077, 60 Ind. Dec. 172 (1977).

Judge's Powers and Duties.

The judges cannot be required to perform other than judicial duties. *Ex parte Griffiths*, 118 Ind. 83, 20 N.E. 513, 3 L.R.A. 398, 10 Am. St. R. 107 (1889).

The constitution does not prohibit the conferring upon judicial officers of powers that are not strictly of a judicial nature. *City of Terre Haute v. Evansville & T.H.R.R.*, 149 Ind. 174, 46 N.E. 77, 37 L.R.A. 189 (1897).

Jurisdiction.

Consent of parties cannot confer jurisdiction on the Supreme Court. It must be conferred by law. *Davis v. Davis*, 36 Ind. 160 (1871); *Branson v. Studabaker*, 133 Ind. 147, 33 N.E. 98 (1892).

The jurisdiction of the Supreme Court is limited to questions of law. *Deal v. State*, 140 Ind. 354, 39 N.E. 930 (1895); *Wait v. Westfall*, 161 Ind. 648, 68 N.E. 271 (1903); *Danville Trust Co. v. Barnett*, 184 Ind. 696, 111 N.E. 429 (1916).

The Supreme Court is the highest judicial tribunal in the state and has authority to determine its own jurisdiction under the law, and the jurisdiction of all other courts, and all persons and courts are bound by the decisions of the Supreme Court. *Pittsburgh, C., C. & St. L.R.R. v. Peck*, 172 Ind. 562, 88 N.E. 939 (1909); *Ex parte France*, 176 Ind. 72, 95 N.E. 515 (1911); *Partlow v. State*, 195 Ind. 164, 144 N.E. 661 (1924), overruled on other grounds, *Stephenson v. State*, 205 Ind. 194, 186 N.E. 293 (1933).

—Legislative Control.

Jurisdiction of the Supreme Court is under legislative control, and such jurisdiction may be enlarged or restricted at the will of the legislature. *Lake Erie & W.R.R. v. Watkins*, 157 Ind. 600, 62 N.E. 443 (1902). (See, however, Ind. Const., art. 7, § 84 as amended, giving certain powers to the Supreme Court.)

The Constitution implies that the right of appeal shall exist in some cases, and the Supreme Court cannot be entirely deprived of appellate jurisdiction. *Lake Erie & W.R.R. v. Watkins*, 157 Ind. 600, 62 N.E. 443 (1902).

The legislature has no authority to confer upon any other court the same jurisdiction as is possessed by the Supreme Court. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907); *Ex parte France*, 176 Ind. 72, 95 N.E. 515 (1911); *Curless v. Watson*, 180 Ind. 86, 102 N.E. 497 (1913).

Relief from Fraud or Mistake.

Inherent power of Supreme Court exists to grant relief where the rights of parties are prejudiced by accidents or mistakes. *Bank of*

Relief from Fraud or Mistake. (Cont'd)

Westfield v. Inman, 133 Ind. 287, 32 N.E. 885 (1892).

Power of Supreme Court, after affirmance of conviction, to order the trial court to permit the filing of a motion for new trial because of fraud in the trial exists even after the end of the term at which such judgment is rendered. Partlow v. State, 195 Ind. 164, 144 N.E. 661 (1924), overruled on other grounds, Stephenson v. State, 205 Ind. 194, 186 N.E.293 (1993).

Reviewing Prior Decisions.

A former decision by the Supreme Court upon the constitutionality of a law would not

be reviewed by the same court in another action, although the personnel of the bench had changed in the meantime, and some other court might if the question were originally presented to them, incline to a different view from that formerly held. *Pennsylvania Co. v. State*, 142 Ind. 428, 41 N.E. 937 (1895).

Stay of Execution.

The Supreme Court has the power to grant a stay of execution in a capital case, pending before it on appeal, when necessary to enable it to investigate and properly decide the questions presented by the record. *Parker v. State*, 135 Ind. 534, 35 N.E. 179, 23 L.R.A. 859 (1893).

33-2-1-4. Oaths — Fines for contempt. — Such court shall have full power to impose and administer all necessary oaths; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine. [2 R.S. 1852, ch. 1, § 6, p. 1.]

Cited: In re Powell, 658 N.E.2d 572 (Ind. 1995).

NOTES TO DECISIONS

ANALYSIS

In general.

Criminal contempt.

—Defined.

—Indirect.

Finding of contempt.

Good faith.

Illegal practice of law.

In General.

All courts of superior jurisdiction have inherent power to protect themselves from contempt, which power the legislature cannot abridge. *Little v. State*, 90 Ind. 338, 46 Am. R. 224 (1883); *Holman v. State*, 105 Ind. 513, 5 N.E. 556 (1886); *Cheadle v. State*, 110 Ind. 301, 11 N.E. 426, 59 Am. R. 199 (1887); *Hawkins v. State*, 125 Ind. 570, 25 N.E. 818 (1890).

This section expressly gives the Supreme Court “full power” to punish by fine and imprisonment “for contempt of its authority and process.” *State v. Shumaker*, 200 Ind. 623, 157 N.E. 769, 58 A.L.R. 954 (1927).

The Indiana Supreme Court possesses both inherent and statutory power to punish by fine and imprisonment for contempt of its authority and powers. In re *Crumpacker*, 431 N.E.2d 91 (Ind.), appeal dismissed, 459 U.S. 803, 103 S. Ct. 25, 74 L. Ed. 2d 41 (1982), 470 U.S. 1074, 105 S. Ct. 1829, 85 L. Ed. 2d 130 (1985).

Criminal Contempt.

—Defined.

A criminal contempt was any act which manifested a disrespect for and defiance of a court and wilful disobedience of a court order could constitute indirect criminal contempt. In re *Perrello*, 260 Ind. 26, 291 N.E.2d 698, 35 Ind. Dec. 36 (1973).

—Indirect.

The willful and intentional disobedience of the orders of a court can constitute indirect criminal contempt. In re *Crumpacker*, 431 N.E.2d 91 (Ind.), appeal dismissed, 459 U.S. 803, 103 S. Ct. 25, 74 L. Ed. 2d 41 (1982), 473 U.S. 1074, 105 S. Ct. 1829, 85 L. Ed. 2d 130 (1985).

Finding of Contempt.

In finding judge of lower court guilty of contempt for disobeying mandate of Supreme Court, unanimity of the justices in finding of contempt is not required. *State ex rel. Goldsmith v. Marion County Superior Court*, 275 Ind. 545, 419 N.E.2d 109 (1981).

Good Faith.

Intent and good faith of contemnor are questions of fact to be decided by the Supreme Court after considering the evidence, but where a violation of a court order is clear it is not a sufficient defense to deny any intention

Good Faith. (Cont'd)
to defy the order. *State ex rel. Goldsmith v. Marion County Superior Court*, 275 Ind. 545, 419 N.E.2d 109 (1981).

Illegal Practice of Law.

By filing petition in circuit court for corporation and sending letters wherein he stated that he was providing legal advice to his employer and members of the employer's family, respondent, who had resigned from the bar, acted in a representative capacity and engaged in the practice of law, and was found guilty of contempt and fined. *In re Supreme Court*, 673 N.E.2d 755 (Ind. 1996).

By holding himself out to clients as an attorney and preparing a change of custody on their behalf while suspended from the

practice of law, attorney acted in a representative capacity constituting the practice of law in violation of the Supreme Court's order, and thus was guilty of indirect contempt of the Court. *In re Lustina*, 683 N.E.2d 236 (Ind. 1997).

Attorney who undertook to represent clients while he was suspended from the practice of law was found in contempt of court and sentenced to 30 days incarceration and a \$200 fine. *In re Baars*, 683 N.E.2d 555 (Ind. 1997).

Where disbarred attorney held himself out as an attorney, his conduct was volitional, contemptuous and ultimately detrimental to the client and the public so that imprisonment and fine were warranted. *In re DeLoney*, 689 N.E.2d 431 (Ind. 1997).

Collateral References. State court's power to order indefinite coercive fine or imprisonment to exact promise of future compli-

ance with court's order — anticipatory contempt. 81 A.L.R.4th 1008.

33-2-1-5, 33-2-1-6. [Repealed.]

Compiler's Notes. These sections, relating to the selection of the chief justice, were repealed by Acts 1971, P.L. 427, § 8. For

present law, see Ind. Const., art. 7, § 3 and IC 33-2.1-4-8.

33-2-1-7. When judges may try cases. — Such judges, in their respective districts, may preside at the trial of any case pending in any county thereof, wherein the circuit judge is incompetent to preside. [2 R.S. 1852, ch. 1, § 9, p. 1.]

33-2-1-8. Appointment of senior judge to serve circuit or superior court. — (a) The supreme court may appoint a judge who is certified as a senior judge by the judicial nominating commission to serve a circuit court or a superior court if the court requests the services of a senior judge.

(b) The supreme court may adopt rules concerning certification by the judicial nominating commission and appointment by the supreme court of senior judges. [P.L.334-1989(ss), § 4; P.L.40-1990, § 3.]

NOTES TO DECISIONS

ANALYSIS

Order.
—Proper.

Order.

—Proper.
The Order of Appointment appointing a

Senior Judge was made in accordance with IC 33-4-8-1(b) and (c) and this section. *Becker v. State*, 646 N.E.2d 978 (Ind. App. 1995).

CHAPTER 2

SUPREME COURT JUDICIAL DISTRICTS

33-2-2-1 — 33-2-2-5. [Repealed.]

Compiler's Notes. This chapter, relating to Supreme Court judicial districts, was repealed by Acts 1971, P.L. 427, § 8. For

present law, see IC 33-2.1-1-1 — IC 33-2.1-5-29.

CHAPTER 3

EXCLUSIVE JURISDICTION TO ADMIT ATTORNEYS TO PRACTICE LAW

SECTION.

33-2-3-1. Admission to practice law — Restraint against unauthorized practice — Jurisdiction of Supreme Court.

33-2-3-1. Admission to practice law — Restraint against unauthorized practice — Jurisdiction of Supreme Court. — The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe. [Acts 1931, ch. 64, § 1, p. 150; 1951, ch. 143, § 1.]

Compiler's Notes. Admission of attorneys to bar and disciplinary proceedings are provided for in Supreme Court Rules A.D. 1 — 31.

Cross References. Procedure to restrain unauthorized practice of law, Rule AP. 4(A).

Indiana Law Journal. Admission to the Bar as Provided For in the Indiana Constitutional Convention of 1850-1851, 1 Ind. L.J. 209.

Progress Under Uniform Admission Rules, 1 Ind. L.J. 328.

Admission to the Bar in Indiana, 1 Ind. L.J. 334.

Admissions to the Bar in Indiana: A Critical History and Analysis, 4 Ind. L.J. 464.

Legal Education and Admission to the Bar, 6 Ind. L.J. 67.

Problem of the Lawyer's Qualifications, 6 Ind. L.J. 268.

Part of the Bar Association in Fixing Standards of Admission, 6 Ind. L.J. 512.

Learning in the Law and Admission to Practice, 7 Ind. L.J. 205, 209, 223 and 226.

The Business Trust As An Organization for Practicing Law, 39 Ind. L.J. 329.

Cited: Professional Adjusters, Inc. v. Tandon, 433 N.E.2d 779 (Ind. 1982); Perry v. Barnard, 745 F. Supp. 1394 (S.D. Ind. 1989), aff'd, 911 F.2d 736 (7th Cir. 1990).

NOTES TO DECISIONS

ANALYSIS

In general.

Attorneys admitted to practice prior to act.
—Status.

Board of law examiners.

Contempt.

Disbarment.

Inmate representation.

Legal research.

Real estate brokers.

Repeal of prior laws.

Trust company, practice of law.

In General.

A citizen of Indiana who alleged that he held Master of Science and Bachelor of Law degrees and that he had been denied equal rights of a citizen by the rejection of his application for admission to the bar of that state, but who did not allege that he had been denied the privilege of taking an examination, could not maintain an action in the federal court against the Indiana state board of law

In General. (Cont'd)

examiners and the Indiana Supreme Court for a declaratory judgment requiring defendants to certify him as a member of the bar, since the right to practice law in state courts is not a privilege granted by the Federal Constitution, and the Supreme Court of Indiana has exclusive jurisdiction to admit attorneys to practice law in the courts of Indiana. *Starr v. State Bd. of Law Exmrs.*, 159 F.2d 305 (7th Cir.), cert. denied, 331 U.S. 830, 67 S. Ct. 1348, 91 L. Ed. 1844 (1947).

An application to Supreme Court for general admission to practice law was denied where the applicant had not complied with the rules and regulations of the Supreme Court prescribed for admission of attorneys under the authority of IC 33-2-3-1, and based his application entirely on former Ind. Const., art. 7, § 21, which was stricken from the constitution at the general election on November 8, 1932. *In re Todd*, 208 Ind. 168, 193 N.E. 865 (1935).

The rules do not prescribe the time within which one who has passed all the tests and met all requirements for admission to the bar must take the oath and be enrolled as an attorney-at-law, but such must be done within a reasonable time. The time may vary with the circumstances. Therefore, where applicant who passed the bar examination in 1935 did not seek enrollment and admission until 1953, such request came too late. *In re Kalamaras*, 232 Ind. 535, 114 N.E.2d 768 (1953).

Under this section the exclusive jurisdiction to admit attorneys to the practice of law in all courts in this state is stated to be in the Supreme Court. *State ex rel. Ind. State Bar Ass'n v. Moritz*, 244 Ind. 156, 191 N.E.2d 21, 1 Ind. Dec. 455 (1963).

Generally it can be said that the filling in of blanks in legal instruments, prepared by attorneys, which require only the use of common knowledge regarding the information to be inserted in said blanks, and general knowledge regarding the legal consequences involved, does not constitute the practice of law. However, when filling in of such blanks involves consideration of significant legal refinement or the legal consequences of the act are of great significance to the parties involved, such practice may be restricted to members of the legal profession. *State ex rel. Ind. State Bar Ass'n v. Indiana Real Estate Ass'n*, 244 Ind. 214, 191 N.E.2d 711, 1 Ind. Dec. 653 (1963).

The execution of deeds is restricted to attorneys. *State ex rel. Ind. State Bar Ass'n v. Indiana Real Estate Ass'n*, 244 Ind. 214, 191 N.E.2d 711, 1 Ind. Dec. 653 (1963).

The Supreme Court has jurisdiction to entertain the proceedings in this case for it is charged with the duty of supervising and

controlling the practice of law in this state and of issuing restraining orders and injunctions against the unauthorized practice of law whether in or out of our courts. *State ex rel. Ind. State Bar Ass'n v. Indiana Real Estate Ass'n*, 244 Ind. 214, 191 N.E.2d 711, 1 Ind. Dec. 653 (1963).

Attorneys Admitted to Practice Prior to Act.**—Status.**

This statute, conferring upon the Supreme Court authority to admit attorneys to practice law in all courts of the state, did not abridge the rights of attorneys who had been admitted to practice in the various counties prior to its enactment. *Lane v. Campbell*, 214 Ind. 376, 14 N.E.2d 552 (1938).

Attorneys who were admitted to practice law in this state prior to the Act of 1931 (IC 33-2-3-1), must, in order to be entitled to practice law in all the courts of the state, be admitted to practice by application made to the Supreme Court. *Lane v. Campbell*, 214 Ind. 376, 14 N.E.2d 552 (1938).

Board of Law Examiners.

This statute gives the Supreme Court jurisdiction to review a final determination of the state board of law examiners, relative to the admission of an applicant to the practice of law in the state of Indiana. *Stern v. State Bd. of Law Exmrs.*, 245 Ind. 526, 199 N.E.2d 850, 3 Ind. Dec. 608 (1964).

Contempt.

The Supreme Court has no jurisdiction over one who is not a member of the bar, and who is practicing law, to punish him for contempt, except for some act which affects or interferes with the functioning of such court. *State ex rel. Indianapolis Bar Ass'n v. Fletcher Trust Co.*, 211 Ind. 27, 5 N.E.2d 538 (1937), overruled on other grounds, *In re Perrello*, 260 Ind. 26, 291 N.E.2d 698 (1973).

Disbarment.

Section 4-3614 (since superseded), giving circuit and superior courts jurisdiction of disbarment of attorneys in certain cases, is not exclusive, but provides a cumulative procedure for disbarment by those courts which in no way circumscribe the jurisdiction over attorneys conferred upon the Supreme Court by this section. *Beamer v. Waddell*, 221 Ind. 232, 45 N.E.2d 1020 (1943). (See Rule A.D. 23(3).

Neither the legislature, when it enacted this section, nor the Supreme Court, when it adopted rules governing such admissions, contemplated that there should be two groups of recognized attorneys or that only a part of them should be responsible to the Supreme

Disbarment. (Cont'd)

Court. *Beamer v. Waddell*, 221 Ind. 232, 45 N.E.2d 1020 (1943).

This section made all attorneys, including those previously admitted under preexisting statutes, subject to such reasonable regulations respecting their right to continue in the practice as that court might, in its judicial discretion, see fit to prescribe. *Beamer v. Waddell*, 221 Ind. 232, 45 N.E.2d 1020 (1943).

Where the Supreme Court's commissioner's findings warranted the conclusion that an attorney's entire professional career had been marked by an utter disregard of the ethical standards of conduct, the attorney was disbarred. *In re Lane*, 223 Ind. 94, 57 N.E.2d 773 (1944).

The authority conferred upon Supreme Court to admit attorneys to practice law in all courts of the state carries with it the power to suspend or disbar them for such causes and under such reasonable conditions as the Supreme Court may, in its judicial discretion, determine to be justifiable under the circumstances. *In re Harrison*, 231 Ind. 665, 109 N.E.2d 722 (1953).

Inmate Representation.

The attorney general of Indiana and chief justice of the Supreme Court of Indiana acted within their constitutional and statutory authority when they refused to allow an inmate to represent another inmate in post-conviction proceedings. *Fair v. Givan*, 509 F. Supp. 1086 (N.D. Ind. 1981).

Legal Research.

The operator of a legal research agency who had not been admitted to the practice of law in the state but had, upon request, given legal advice to a prisoner, was guilty of the unau-

thorized practice of law. *State ex rel. Disciplinary Comm'n v. Owen*, 486 N.E.2d 1012 (Ind. 1986).

Real Estate Brokers.

Real estate brokers and agents should, within certain limitations, be permitted to fill in the forms of the following legal instruments prepared by attorneys, the use of which is here placed in issue: listing agreement, earnest money contract, proposition, offer to purchase, option, option (with listing clause), affidavit (real estate vendor), purchase agreement, exchange agreement, bill of sale, contracts of sale. The execution of legal instruments other than these should be limited to members of the legal profession. *State ex rel. Ind. State Bar Ass'n v. Indiana Real Estate Ass'n*, 244 Ind. 214, 191 N.E.2d 711, 1 Ind. Dec. 653 (1963).

Repeal of Prior Laws.

This section, conferring authority upon the Supreme Court to prescribe rules for the admission of persons to practice law in the courts of this state, repealed the prior act (§ 832 of Acts 1881 (Spec. Sess.), ch. 38, p. 240), relating to the same subject. *Lane v. Campbell*, 214 Ind. 376, 14 N.E.2d 552 (1938).

Trust Company, Practice of Law.

Information filed by bar association charging a trust company with violation of the statute regulating the practice of law by preparation of wills by its attorney-employees for a consideration is an attempt to charge the respondent with criminal contempt. *State ex rel. Indianapolis Bar Ass'n v. Fletcher Trust Co.*, 211 Ind. 27, 5 N.E.2d 538 (1937), overruled on other grounds, *In re Perrello*, 260 Ind. 26, 291 N.E.2d 698 (1973).

CHAPTER 3.1

DISCIPLINARY PROCEEDINGS AGAINST ATTORNEYS

SECTION.

33-2-3.1-1. Definitions.

33-2-3.1-2. Statements to commission — Immunity from liability.

SECTION.

33-2-3.1-3. Executive secretary and staff — Immunity.

33-2-3.1-1. Definitions. — As used in this chapter, the term:

- (a) "Admission and Discipline Rule" refers to the Rules for Admission to the Bar and the "Discipline of Attorneys" adopted by the Supreme Court of Indiana.
- (b) "Commission" shall mean the disciplinary commission created by Admission and Discipline Rule Twenty-Three (23).
- (c) "Executive secretary" means the executive secretary of the disciplinary commission.

(d) “Commissioner” shall mean a member of the disciplinary commission appointed pursuant to Admission and Discipline Rule Twenty-Three (23). [IC 33-2-3.1-1, as added by Acts 1972, P.L. 204, § 1.]

Cross References. Disciplinary proceedings against attorneys, Rule A.D. 23.

33-2-3.1-2. Statements to commission — Immunity from liability. — Any person shall be immune from civil liability for damages for any sworn or written statements, made without malice, and transmitted to the commission, executive secretary, or his staff, or made in the course of investigatory, hearing or review proceedings under Admission and Discipline Rule Twenty-Three (23). [IC 33-2-3.1-2, as added by Acts 1972, P.L. 204, § 1.]

33-2-3.1-3. Executive secretary and staff — Immunity. — The executive secretary, his staff, counsel, investigators, hearing officers, and the commissioners shall be immune from civil liability for damages for conduct within the scope and arising out of the performance of their duties. [IC 33-2-3.1-3, as added by Acts 1972, P.L. 204, § 1.]

CHAPTER 4

CERTIFICATION OF STATE LAW TO FEDERAL COURTS

SECTION.
33-2-4-1. Certification.

33-2-4-1. Certification. — The Supreme Court of this state may, by rule of court, provide that, when it shall appear to the Supreme Court of the United States, to any circuit court of appeals of the United States, or to the Court of Appeals of the District of Columbia, that there are involved in any proceeding before it questions or propositions of the laws of this state, which are determinative of the said cause, and there are no clear controlling precedents in the decisions of the Supreme Court of this state, such federal appellate court may certify such questions or propositions of the laws of this state to the Supreme Court of this state for instructions concerning such questions or propositions of state law, which certificate the Supreme Court of this state, by written opinion, may answer. [IC 33-2-4-1, as added by Acts 1971, P.L. 426, § 1.]

Cross References. Certification of state law to federal courts, Rule AP. 15(O). **Indiana Law Review.** Appealability of Abstention Orders, 10 Ind. L. Rev. 556.

ARTICLE 2.1

JUDICIARY LAW OF 1972

CHAPTER.	CHAPTER.
1. GENERAL PROVISIONS, 33-2.1-1-1 — 33-2.1-1-3.	THE COURT OF APPEALS, 33-2.1-2-1 — 33-2.1-2-7.
2. ORGANIZATION OF THE SUPREME COURT AND	3. DUTIES OF THE SUPREME COURT AND THE

CHAPTER.

- COURT OF APPEALS, 33-2.1-3-1 — 33-2.1-3-3.
4. ORGANIZATION, OPERATION AND DUTIES OF THE JUDICIAL NOMINATING COMMISSION, 33-2.1-4-1 — 33-2.1-4-17.
 5. RETIREMENT, DISCIPLINE AND REMOVAL OF JUDGES, 33-2.1-5-1 — 33-2.1-5-29.
 6. DISCIPLINE OF JUDGES OF SUPERIOR, PROBATE, JUVENILE AND CRIMINAL COURTS, 33-2.1-6-1 — 33-2.1-6-30.
 7. OFFICE OF JUDICIAL ADMINISTRATION, 33-2.1-7-1 — 33-2.1-7-9.
 8. ETHICS AND CONFLICT OF INTEREST FOR JUDGES

CHAPTER.

- AND PROSECUTING ATTORNEYS, 33-2.1-8-1 — 33-2.1-8-10.
9. DEFENSE OF JUDGES AND PROSECUTING ATTORNEYS IN CIVIL ACTIONS, 33-2.1-9-1 — 33-2.1-9-4.
 10. INDIANA CHILD SUPPORT ADVISORY COMMITTEE, 33-2.1-10-1 — 33-2.1-10-9.
 11. CIVIL LEGAL AID FUND, 33-2.1-11-1 — 33-2.1-11-7.
 12. INDIANA CONFERENCE FOR LEGAL EDUCATION OPPORTUNITY, 33-2.1-12-1 — 33-2.1-12-7.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 33-2.1-1-1. Short title.
 33-2.1-1-2. Purpose.
 33-2.1-1-3. Definitions.

33-2.1-1-1. Short title. — This article shall be known and may be cited as the “Judiciary Article of 1972.” [IC 33-2.1-1-1, as added by Acts 1971, P.L. 427, § 2.]

33-2.1-1-2. Purpose. — The purpose and intent of this article is to provide for the operation and the organization of the Supreme Court, Court of Appeals, Judicial Nominating Commission and Commission on Judicial Qualifications pursuant to Article VII of the Constitution of Indiana. [IC 33-2.1-1-2, as added by Acts 1971, P.L. 427, § 2.]

33-2.1-1-3. Definitions. — The definitions in this section have the following meanings throughout this article, unless the context or subject matter otherwise requires:

- (1) “Judicial nominating commission” means the commission described in Article 7, Section 9, of the Constitution of the State of Indiana.
- (2) “Judicial office” means the office held by a judge or justice.
- (3) “Vacancy” means an opening in a judicial office or an opening on the judicial nominating commission which occurs by reason of death, retirement, resignation, or removal.
- (4) “Non-attorney commissioners” means the three (3) individuals not admitted to the practice of law, who are appointed to the judicial nominating commission by the governor.
- (5) “Attorney commissioners” means the three (3) individuals admitted to the practice of law, who are elected to the judicial nominating commission by the electors.
- (6) “Electors” means individuals who are attorneys in good standing, admitted to the practice of law in Indiana.
- (7) “Commission on judicial qualifications” means the commission described in Article 7, Section 9, of the Constitution of the State of Indiana.

- (8) “Judge” means a judge of the court of appeals, except when used in:
- (A) IC 33-2.1-5, in which case the term “judge” shall include justices of the supreme court as well as judges of the court of appeals; or
 - (B) IC 33-2.1-8.
- (9) “Justice” means a justice of the supreme court of Indiana.
- (10) “Chairman” includes the acting chairman.
- (11) “Masters” means the special masters appointed by the chief justice upon request of the commission.
- (12) “Presiding master” means the master so designated by the chief justice or, in the absence of such designation, the justice or judge named in the order appointing masters.
- (13) “Counsel” means the lawyer designated by the commission to gather and present evidence before the masters or commission with respect to the charges against a judge and to represent the commission before the supreme court in connection with any proceedings before the court.
- (14) “Shall” is mandatory and “may” is permissive.
- (15) “Mail” and “mailed” include ordinary mail or personal delivery.
- (16) The masculine gender includes the feminine gender.

[IC 33-2.1-1-3, as added by Acts 1971, P.L. 427, § 2; P.L.3-1989, § 186.]

CHAPTER 2

ORGANIZATION OF THE SUPREME COURT AND THE COURT OF APPEALS

SECTION.

- 33-2.1-2-1. Supreme Court — Judges — Quorum — Jurisdiction.
- 33-2.1-2-2. Court of Appeals — Judges — Districts — Where court held — Transfer of cases between districts.
- 33-2.1-2-3. Residency requirements for judges of the Court of Appeals.

SECTION.

- 33-2.1-2-4. Chief judge — Presiding judges.
- 33-2.1-2-5. Disqualification or absence of a judge.
- 33-2.1-2-6. Approval or rejection of justices or judges.
- 33-2.1-2-7. Personnel.

33-2.1-2-1. Supreme Court — Judges — Quorum — Jurisdiction. —

The Supreme Court shall consist of five (5) judges, any three (3) of whom shall constitute a quorum and shall have jurisdiction as provided by the Constitution of Indiana. [IC 33-2.1-2-1, as added by Acts 1971, P.L. 427, § 3.]

Cross References. Appointment of justices, Ind. Const., art. 7, § 10 and IC 33-2.1-4-10.

Approval or rejection of justices by the electorate, IC 33-2.1-2-6.

Jurisdiction of Supreme Court, Ind. Const., art. 7, § 4; Rule AP. 4.

Retirement, discipline and removal of justices, IC 33-2.1-5-1 — IC 33-2.1-5-29.

NOTES TO DECISIONS

Finding by Quorum.

Three justices constitute a quorum, and when three justices were sitting in a contempt hearing, the finding of guilty by two of the

justices was sufficient, unanimity of the justices not being required. *State ex rel. Goldsmith v. Marion County Superior Court*, 275 Ind. 545, 419 N.E.2d 109 (1981).

33-2.1-2-2. Court of Appeals — Judges — Districts — Where court held — Transfer of cases between districts. — (a) The court of appeals of Indiana shall be composed of fifteen (15) judges, who shall serve for the hearing and decision of causes in five (5) geographic districts pursuant to Article 7, Section 5 of the Constitution of the State of Indiana.

(b) The state of Indiana is divided into five (5) geographic districts which shall be designated as the “court of appeals — First District; Second District; Third District; Fourth District; and Fifth District” respectively:

(1) The following counties constitute the First District: Bartholomew, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Fountain, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne.

(2) The following counties constitute the Second District: Adams, Blackford, Carroll, Cass, Clinton, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Marion, Miami, Tippecanoe, Tipton, Wabash, Wells, and White.

(3) The following counties constitute the Third District: Allen, Benton, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Warren, and Whitley.

(4) The entire state constitutes the Fourth District.

(5) The entire state constitutes the Fifth District.

(c) All districts of the court of appeals shall sit for the hearing and decision of causes in Indianapolis, or such other place as the chief judge of the court of appeals shall designate.

(d) All cases appealed to the court of appeals shall be placed upon the docket of the district from which such appeals may have been taken. If, at any time, in the opinion of the court of appeals there is an undue disparity in the number of cases pending on the dockets of those districts, the court of appeals may order the transfer of such cases as it may deem advisable from one (1) district to another. [IC 33-2.1-2-2, as added by Acts 1971, P.L. 427, § 3; 1978, P.L. 137, § 1; P.L.158-1990, § 1.]

Effective Dates. P.L.158-1990, § 4. January 1, 1991.

Cross References. Appointment of judges, Ind. Const., art. 7, § 10 and IC 33-2.1-4-10.

Approval or rejection of judges by the electorate, IC 33-2.1-2-6.

Retirement, discipline and removal of judges, IC 33-2.1-5-1 — IC 33-2.1-5-29.

NOTES TO DECISIONS

Order Book Entries.

The Court of Appeals is not required to make order book entries reflecting inter-district transfers of cases and disqualifications

and assignments of judges. *State ex rel. Shortridge v. Court of Appeals*, 468 N.E.2d 214 (Ind. 1984).

33-2.1-2-3. Residency requirements for judges of the Court of Appeals. — (a) Judges of the First, Second, and Third Districts of the court of appeals must have resided in their respective districts before appointment to the court. However, judges of the court of appeals appointed before July 1, 1993, must reside in the district from which they are appointed.

(b) The following requirements apply to judges of the Fourth and Fifth Districts of the court of appeals:

(1) One (1) judge must have resided in the First District before appointment to the court.

(2) One (1) judge must have resided in the Second District before appointment to the court.

(3) One (1) judge must have resided in the Third District before appointment to the court.

(c) Whenever a vacancy is created in the court of appeals, the individual who is appointed by the governor to fill such vacancy must be a resident of the district in which the vacancy occurred. [IC 33-2.1-2-3, as added by Acts 1971, P.L. 427, § 3; 1978, P.L. 137, § 2; P.L.158-1990, § 2; P.L.18-1995, § 14.]

Indiana Law Review. Women Executives, Managers and professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

33-2.1-2-4. Chief judge — Presiding judges. — (a) The judges of the Court of Appeals shall select one (1) of their number as chief judge of such court and he shall retain that office for a period of three years from the effective date of his appointment, subject to reappointment in the same manner, except that a member of the court may resign the office of chief judge without resigning from the court. During a vacancy in the office of chief judge caused by absence, illness, incapacity or resignation all powers and duties of the chief judge shall devolve upon the judge of the Court of Appeals who is senior in length of service, and if equal in length of service the determination shall be by lot until such time as the cause of vacancy is terminated or the vacancy is filled.

(b) Each district, other than the district from which the chief judge was chosen, shall select one of their number as presiding judge of their respective district. [IC 33-2.1-2-4, as added by Acts 1971, P.L. 427, § 3.]

33-2.1-2-5. Disqualification or absence of a judge. — Whenever a judge disqualifies himself or is otherwise unable to sit for the hearing or decision of a cause in his district, the chief judge shall assign a Court of Appeals judge to said district for the hearing and decision of said cause. [IC 33-2.1-2-5, as added by Acts 1971, P.L. 427, § 3.]

33-2.1-2-6. Approval or rejection of justices or judges. — (a) Justices and judges of the supreme court and the court of appeals shall be approved or rejected by the electorate of the state pursuant to Article 7, Section 11 of the Constitution of the State of Indiana.

(b) A justice or judge who wishes to be retained in office shall file a statement with the secretary of state, not later than noon July 15 of the year in which the question of retention of the justice or judge is to be placed on the general election ballot, indicating that the justice or judge wishes to have the question of the justice's or judge's retention placed on the ballot.

(c) This subsection applies to a justice or judge:

- (1) Who does not file a statement under subsection (b); and
- (2) Whose term expires under Article 7, Section 11 of the Constitution of the State of Indiana during the year in which the question of the retention of the justice or judge would have been placed on the general election ballot.

The term of a justice or judge expires December 31 of the year in which the question of the justice's or judge's retention would have been placed on the ballot.

(d) This subsection applies to a justice or judge:

- (1) Who files a statement under subsection (b); and
- (2) Whose retention is rejected by the electorate.

The term of a justice or judge ends when the secretary of state issues a certificate under IC 3-12-5-1 stating that the justice or judge has been removed. However, if the justice or judge has filed a petition for a recount under IC 3-12-11, the term of the justice or judge does not end until the state recount commission has issued a certificate under IC 3-12-11-18 stating that the electorate has rejected the retention of the justice or judge.

(e) The question of approval or rejection of a justice or judge shall be placed on the general election ballot in the form prescribed by IC 3-11-2 and must state "Shall Judge or Justice (insert name here) be retained in office?". [IC 33-2.1-2-6, as added by Acts 1971, P.L. 427, § 3; P.L.3-1987, § 526; P.L.3-1995, § 148.]

Cross References. Retirement, discipline and removal of justices and judges, IC 33-2.1-5-1 — IC 33-2.1-5-29.

33-2.1-2-7. Personnel. — The Court of Appeals may appoint such personnel as the court determines to be necessary. The judges of each geographic district may appoint law clerks, secretaries and such other personnel as may be necessary for the holding of court and the administration of the court's duties. [IC 33-2.1-2-7, as added by Acts 1971, P.L. 427, § 3.]

CHAPTER 3

DUTIES OF THE SUPREME COURT AND THE COURT OF APPEALS

SECTION.

33-2.1-3-1. Rules.

33-2.1-3-2. Opinions.

33-2.1-3-3. [Repealed.]

33-2.1-3-1. Rules. — The Supreme Court shall adopt and publish rules in conformity with IC 33-2.1-2 specifying the terms and conditions under

which the Supreme Court and the Court of Appeals shall exercise jurisdiction. [IC 33-2.1-3-1, as added by Acts 1971, P.L. 427, § 4; 1981, P.L. 272, § 7.]

Indiana Law Journal. Changing the Constitutional Jurisdiction of the Indiana Supreme Court: Letting a Court of Last Resort Act Like One, 63 Ind. L.J. 669 (1988).

Cited: State ex rel. Shortridge v. Court of Appeals, 468 N.E.2d 214 (Ind. 1984).

33-2.1-3-2. Opinions. — The judicial opinion or decision in each case determined by the supreme court or the court of appeals shall be reduced to writing. Reports of these opinions and decisions, and written decisions of the tax court may be published and distributed in the manner prescribed by the supreme court. [IC 33-2.1-3-2, as added by Acts 1971, P.L. 427, § 4; P.L.4-1983, § 12; P.L.291-1985, § 13; P.L.18-1995, § 15.]

NOTES TO DECISIONS

Written Decisions.

The Supreme Court and the court of appeals are required to issue written decisions, as opposed to oral ones, but are not constitu-

tionally required to give a written statement of reasons for every action taken by the court. Tyson v. State, 593 N.E.2d 175 (Ind. 1992).

33-2.1-3-3. [Repealed.]

Compiler's Notes. This section, concerning the organization of the Court of Appeals,

was repealed by Acts 1978, P.L. 137, § 6. For present law, see IC 33-2.1-2-2.

CHAPTER 4

ORGANIZATION, OPERATION AND DUTIES OF THE JUDICIAL NOMINATING COMMISSION

SECTION.

- 33-2.1-4-1. Nonattorney commissioners.
- 33-2.1-4-2. Attorney commissioners.
- 33-2.1-4-3. Election procedures.
- 33-2.1-4-4. Notification.
- 33-2.1-4-5. Duration in office.
- 33-2.1-4-6. Duties of commission.
- 33-2.1-4-7. Considerations in evaluating judicial candidates.
- 33-2.1-4-8. Meetings — Notice — Quorum — Rules — Executive sessions.
- 33-2.1-4-9. Withdrawal of candidate and Multiple vacancies.
- 33-2.1-4-10. Appointment of justices and judges by chief justice.
- 33-2.1-4-11. Effective date of appointment.

SECTION.

- 33-2.1-4-12. Personnel.
- 33-2.1-4-13. Staff duties — Finding of fact concerning judicial candidates — Biographical sketches of nominees for Judicial Nominating Commission.
- 33-2.1-4-14. Compensation of Commission members.
- 33-2.1-4-15. Immunity of commissioners, employees, and staff from civil liability.
- 33-2.1-4-16. Immunity of persons or agencies furnishing information or assistance from civil liability.
- 33-2.1-4-17. Certification as senior judge.

33-2.1-4-1. Nonattorney commissioners. — (a) The governor shall appoint three (3) nonattorney citizens of Indiana, one (1) each from the First District, the Second District, and the Third District of the court of appeals, as commissioners of the judicial nominating commission.

(b) One (1) month prior to the expiration of a term of office of a nonattorney commissioner, the governor shall either reappoint such com-

missioner as provided in section 5 [IC 33-2.1-4-5] of this chapter or appoint a new nonattorney commissioner. All appointments made by the governor to the judicial nominating commission shall be certified to the secretary of state and to the clerk of the supreme court within ten (10) days of the appointment.

(c) Except as provided in subsection (e), the governor shall appoint each nonattorney commissioner for a term of three (3) years.

(d) Each appointed nonattorney commissioner shall reside in the court of appeals district for which he was appointed. A nonattorney commissioner shall be considered as having resigned his position if he changes his residency from the court of appeals district for which he was appointed.

(e) Whenever a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing of such fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the governor within sixty (60) days after he has notice of such vacancy. The term of the nonattorney commissioner so appointed shall be for the unexpired term of the member whose vacancy he has filled. [IC 33-2.1-4-1, as added by Acts 1971, P.L. 427, § 5; 1978, P.L. 137, § 3; P.L.184-1986, § 1.]

33-2.1-4-2. Attorney commissioners. — (a) For purposes of electing members to the judicial nominating commission, the state shall be divided into three (3) districts, which shall correspond to the First District, the Second District, and the Third District of the court of appeals.

(b) The qualified electors consist of the individuals who are registered with the clerk of the supreme court as attorneys in good standing under the requirements of the supreme court.

(c) The electors of each district shall elect one (1) resident of their respective district, who is admitted to the practice of law in Indiana, to the judicial nominating commission. The term of office of each elected member shall be three (3) years, commencing on the first day of January following his election. During the month prior to the expiration of each elected member's term of office an election shall be held to fill the succeeding three (3) year term of office. Attorney commissioners on the commission shall reside for the term of their office in the district from which they were elected. An attorney commissioner shall be considered as having resigned his position if he changes his residency from the court of appeals district for which he was elected.

(d) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the judicial nominating commission shall be filled for the unexpired term of the member creating the vacancy by a special election. An attorney commissioner who is elected to fill an unexpired term shall commence his duties immediately upon the certification of his election to the secretary of state. [IC 33-2.1-4-2, as added by Acts 1971, P.L. 427, § 5; 1978, P.L. 137, § 4; P.L.184-1986, § 2.]

33-2.1-4-3. Election procedures. — The attorney commissioners of the judicial nominating commission shall be elected by the following process:

(1) The clerk of the supreme court shall, at least ninety (90) days prior to the date of an election, send a notice by mail to the address for each qualified elector shown on the records of the clerk informing them that nominations for the election must be made to the clerk of the supreme court at least sixty (60) days prior to the election.

(2) A nomination in writing accompanied by a signed petition of thirty (30) electors from the nominee's district, and the written consent of the nominee shall be filed by any electors or group of electors admitted to the practice of law in Indiana who reside in the same district as the nominee, by mail or otherwise, in the office of the clerk of the supreme court at least sixty (60) days prior to the election.

(3) The clerk of the supreme court shall prepare and print separate ballots for each court of appeals district. These ballots shall contain the names and residence addresses of all nominees residing within the district for which the ballots are prepared, and whose written nominations, petitions, and written statements of consent have been received sixty (60) days prior to the election.

(4) The ballot must read as follows:

Indiana Judicial Nominating Commission
BALLOT FOR DISTRICT ()

To be cast by individuals residing in District () and registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court. Vote for one (1) member listed below for Indiana Judicial Nominating Commissioner for the term commencing.....

District ()

(Name) (Address)

(Name) (Address)

(Name) (Address)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the Clerk of the Supreme Court of Indiana, Indianapolis, Indiana, not later than

DESTROY BALLOT IF NOT USED

(5) The nominee from a district receiving the most votes from the district shall be elected.

(6) The clerk shall also supply with each ballot distributed by him a certificate, to be completed and signed and returned by the elector voting such ballot, certifying that he is registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court, and that he voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.

(7) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope shall not be opened until the counting of the ballots.

(8) The clerk of the supreme court shall mail a ballot and its accompanying material to all electors at least two (2) weeks before the date of the election.

(9) The ballot and the accompanying certificate must be received by the clerk of the supreme court by 4 P.M. on the last day of the election period.

(10) Upon receiving the completed ballots and the accompanying certificate the clerk of the supreme court shall insure that the certificates have been completed in compliance with this article. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(11) The clerk of the supreme court, with the assistance of the secretary of state, and the attorney general, shall open and canvass all ballots after 4 P.M. on the last day of the election period in the office of the clerk of the supreme court. No ballots received after 4 P.M. are to be counted unless the chief justice of the state orders an extension of time because of unusual circumstances. Upon canvassing the ballots the clerk of the supreme court shall place all ballots back in their packages. These, along with the certificates, shall be retained in the clerk's office for a period of six (6) months, and the clerk shall permit no one to inspect them except upon an order of the supreme court.

(12) Within ten (10) days after the election, the clerk shall certify the results to the secretary of state.

(13) In any election held for selection of attorney commissioners of the judicial nominating commission, in case two (2) or more nominees are tied, the canvassers shall resolve the tie by lot in such manner as they shall adopt and the winner of the lot shall be deemed to have been elected. [IC 33-2.1-4-3, as added by Acts 1971, P.L. 427, § 5; P.L.184-1986, § 3.]

33-2.1-4-4. Notification. — After the attorney commissioners have been elected, and after the names of the non-attorney commissioners appointed by the Governor have been certified to the secretary of state as this article so provides, the clerk shall by regular mail, notify the members of the commission of their election or appointment. [IC 33-2.1-4-4, as added by Acts 1971, P.L. 427, § 5.]

33-2.1-4-5. Duration in office. — A member of the judicial nominating commission may serve until his successor is appointed or elected. No attorney commissioner or nonattorney commissioner shall be eligible for successive reelection or reappointment, except that one who has been appointed or elected to fill a vacancy on the commission for less than one (1) year shall be eligible upon the expiration of that term, if otherwise qualified, for a succeeding term. [IC 33-2.1-4-5, as added by Acts 1971, P.L. 427, § 5; P.L.184-1986, § 4.]

33-2.1-4-6. Duties of commission. — When a vacancy occurs in the supreme court, the court of appeals, or the tax court, the clerk of the court shall promptly notify the chairman of the commission of such vacancy. The chairman shall call a meeting of the commission within twenty (20) days

following such notice. The commission shall submit its nominations of three (3) candidates for each vacancy and certify them to the governor as promptly as possible, and in any event not later than seventy (70) days from the time such vacancy occurs. When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the clerk shall notify the commission immediately thereof, and the commission may, within sixty (60) days of such notice of such vacancy, make its nominations and submit to the governor the names of three (3) persons nominated for such forthcoming vacancy. [IC 33-2.1-4-6, as added by Acts 1971, P.L. 427, § 5; P.L.291-1985, § 14.]

Opinions of Attorney General. The additional judgeship created upon establishment of the Court of Appeals did not come into being until January 1, 1972 and the governor

had to make his selection from three names submitted by the judicial nominating commission after that date. 1971, No. 30, p. 81.

33-2.1-4-7. Considerations in evaluating judicial candidates. —

(a) The judicial nominating commission shall submit to the governor, from among all those names the commission considers for a vacancy, the names of only the three (3) most highly qualified candidates. In determining which candidates are most highly qualified each commission member shall evaluate each candidate, in writing, on the following considerations:

(1) Legal education, including law schools attended and postlaw school education, and any academic honors and awards achieved.

(2) Legal writings, including but not limited to legislative draftings, legal briefs, and contributions to legal journals and publications.

(3) Reputation in the practice of law, as evaluated by attorneys and judges with whom the candidate has had professional contact, and the type of legal practice, including experience and reputation as a trial lawyer or trial judge.

(4) Physical condition, including general health, stamina, vigor, and age.

(5) Financial interests, including any such interest which might conflict with the performance of judicial responsibilities.

(6) Activities in public service, including writings and speeches concerning public affairs and contemporary problems, and efforts and achievements in improving the administration of justice.

(7) Any other pertinent information which the commission feels is important in selecting the most highly qualified individuals for judicial office.

(b) The commission shall not make an investigation to determine these considerations until the individual states in writing that the individual desires to hold a judicial office that has been or will be created by a vacancy and that the individual consents to the public disclosure of information under subsections (d) and (g).

(c) The commission shall inquire into the personal and legal backgrounds of each candidate by investigations made independent from the statements on an application of the candidate or in an interview with the candidate. In completing these investigations the commission, in its discretion, may use information provided by or the assistance of:

- (1) A law enforcement agency;
- (2) Any organization of lawyers, judges, or individual practitioners; or
- (3) Any other person or association.

(d) The commission shall publicly disclose the names of all candidates who have filed for judicial appointment after the commission has received the consent required by subsection (b) but before the commission has begun to evaluate any of the candidates. If the commission's screening of the candidates for judicial appointment occurs in an executive session conducted under IC 5-14-1.5-6.1(b)(9), the screening may not reduce the number of candidates for further consideration to fewer than ten (10) individuals unless there are fewer than ten (10) individuals from which to choose before the screening. When the commission's screening has reduced the number of candidates for further consideration to not less than ten (10) or it has less than ten (10) eligible candidates otherwise from which to choose, the commission shall:

- (1) Publicly disclose the names of those individuals and their applications before taking any further action; and
- (2) Give notice of any further action in the same manner that notice is given under IC 5-14-1.5.

(e) Information described in subsection (d)(1) is identifying information for the purposes of IC 5-14-1.5-6.1(b)(9).

(f) The commission shall submit with the list of three (3) nominees to the governor their written evaluation of each such nominee, based on those considerations stated in subsection (a). The list of names submitted to the governor and the written evaluation of each nominee shall be publicly disclosed by the commission.

(g) Notwithstanding IC 5-14-3-4, all public records (as defined in IC 5-14-3-2) of the judicial nominating commission are subject to IC 5-14-3-3, including records described in IC 5-14-3-4(b)(12). However, the following records are excepted from public inspection and copying at the discretion of the judicial nominating commission:

- (1) Personnel files of commission employees and files of applicants for employment with the commission to the extent permitted under IC 5-14-3-4(b)(8).
- (2) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1, unless the records are prepared for use in the consideration of a candidate for judicial appointment.
- (3) Investigatory records prepared for the commission under subsection (c) until:
 - (A) The records are filed or introduced into evidence in connection with the consideration of a candidate;
 - (B) The records are publicly discussed by the commission in connection with the consideration of a candidate;
 - (C) A candidate elects to have the records released by the commission; or
 - (D) The commission elects to release the records that the commission considers appropriate in response to publicly disseminated statements relating to the activities or actions of the commission;

whichever occurs first.

(4) Applications of candidates for judicial appointment who are not among the applicants eligible for further consideration following the commission's screening under subsection (d).

(5) The work product of an attorney (as defined by IC 5-14-3-2) representing the commission.

(h) When an event described by subsection (g)(3) occurs, the investigatory record becomes available for public inspection and copying under IC 5-14-3-3.

(i) As used in this subsection, "attributable communication" refers to a communication containing the sender's name, address, and telephone number. The commission shall provide a copy of all attributable communications regarding a candidate for judicial appointment to each member of the commission. An attributable communication becomes available for public inspection and copying under IC 5-14-3-3 after a copy has been provided to each member of the commission. The commission may not consider a communication other than an attributable communication in evaluating any candidate for judicial appointment.

(j) The commission shall release the investigatory records prepared for the commission under subsection (c) to the candidate for judicial appointment described by the records. [IC 33-2.1-4-7, as added by Acts 1971, P.L. 427, § 5; P.L.291-1985, § 15; P.L.184-1986, § 5; P.L.281-1989, § 1; P.L.1-1991, § 181.]

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

33-2.1-4-8. Meetings — Notice — Quorum — Rules — Executive sessions. — (a) The judicial nominating commission shall meet from time to time as may be necessary to discharge its responsibilities under the Constitution of the State of Indiana and the laws of the state. Meetings of the commission shall be called by its chairman, or in the event of the chairman's failure to call a meeting when a meeting may be necessary, upon the call of any four (4) members of the commission. Whenever a meeting is called, the chairman shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(b) Meetings of the commission are to be held at such a place in Indiana as the chairman of the commission may arrange.

(c) The commission shall act only at a meeting and may act only on the concurrence of a majority of its members attending a meeting. The commission may not vote to reduce the number of candidates for further consideration or to submit or not submit the list of nominees under subsection (e) during an executive session. Four (4) members constitute a quorum.

(d) The commission may adopt reasonable and proper rules for the conduct of its proceedings and the discharge of its duties. The rules must comply with this chapter and include procedures by which eligible candi-

dates for a vacancy in the supreme court or court of appeals may submit their names to the commission. The rules are public records, and the meetings of the commission at which the rules are considered for initial adoption or amendment must be publicly announced and open to the public.

(e) Notwithstanding IC 5-14-1.5-2, the commission is a public agency for the purposes of IC 5-14-1.5. The commission may meet in executive session under IC 5-14-1.5-6.1 for the consideration of a candidate for judicial appointment if:

- (1) Notice of the executive session is given in the manner prescribed by IC 5-14-1.5-5;
- (2) All interviews of candidates are conducted at meetings open to the public; and
- (3) Copies of all attributable communications concerning the candidates (as defined in section 7 [IC 33-2.1-4-7] of this chapter) have been provided to all commission members and made available for public inspection and copying. [IC 33-2.1-4-8, as added by Acts 1971, P.L. 427, § 5; P.L.184-1986, § 6; P.L.281-1989, § 2; P.L.1-1991, § 182.]

33-2.1-4-9. Withdrawal of candidate and Multiple vacancies. — If any nominee dies or requests in writing that his name be withdrawn, the commission shall nominate another person to replace him from the list of nominees previously provided. Whenever there are existing at the same time two (2) or more vacancies, the commission shall nominate and submit to the governor a list of three (3) different persons for each of such vacancies. [IC 33-2.1-4-9, as added by Acts 1971, P.L. 427, § 5.]

33-2.1-4-10. Appointment of justices and judges by chief justice. — In the event of the failure of the governor to make an appointment within the sixty (60) days from the date the names of the nominees are submitted to him, the chief justice of the state shall make the appointment from such nominees.

Any change in a list submitted to the governor pursuant to section 9 [IC 33-2.1-4-9] of this chapter shall require a re-submission of the altered list to the governor and the sixty (60) day period in which the governor must make the appointment shall begin on the date of re-submission. [IC 33-2.1-4-10, as added by Acts 1971, P.L. 427, § 5; 1981, P.L. 272, § 8.]

33-2.1-4-11. Effective date of appointment. — An individual appointed to the supreme court, the court of appeals, or the tax court by the governor shall commence the duties of his office immediately upon the effective date of his appointment. No appointment to a judicial office shall become effective until a vacancy for such office exists. [IC 33-2.1-4-11, as added by Acts 1971, P.L. 427, § 5; P.L.291-1985, § 16.]

33-2.1-4-12. Personnel. — (a) The judicial nominating commission shall have the authority to employ investigators, and such experts as the commission in its discretion determines to be necessary to carry out its functions and purposes. The commission may employ special counsel in any proceedings if determined by the commission to be advisable.

(b) The division of state court administration shall serve the judicial nominating commission in performing its statutory and constitutional functions.

(c) The general assembly may appropriate such sums as it deems necessary for the expenses which may be incurred in the administration of this article. [IC 33-2.1-4-12, as added by Acts 1971, P.L. 427, § 5; 1976, P.L. 130, § 1; P.L.300-1987, § 1.]

Effective Dates. P.L.300-1987, § 8. January 1, 1988.

33-2.1-4-13. Staff duties — Finding of fact concerning judicial candidates — Biographical sketches of nominees for Judicial Nominating Commission. — (a) The staff of the Judicial Nominating Commission shall make such findings of fact concerning those individuals eligible to fulfill a vacancy in a judicial office as the commission directs.

(b) The staff shall compile biographical sketches of each nominee running for election to the Judicial Nominating Commission. Such information shall be submitted to the clerk of the Supreme Court for mailing with the ballots, to qualified electors. These biographical sketches shall include:

- (1) Name and address;
- (2) Legal background, including:
 - (A) Type of practice;
 - (B) Law firm;
 - (C) Law school-year of graduation, honors, other pertinent information;
- (3) General educational background;
- (4) A short statement by the nominee stating his efforts and achievements in bringing about improvement and betterment of the administration of justice;
- (5) Public offices or positions:
 - (A) All public salaried positions;
 - (B) All services contributed to a public or charitable organization;
- (6) Business and civic affairs;
- (7) Any other pertinent information that the commission deems important.

(c) The staff shall carry out any other duties assigned to it by the general assembly and by the Judicial [Nominating] Commission when acting in that capacity and in its capacity as the Commission on Judicial Qualifications. [IC 33-2.1-4-13, as added by Acts 1971, P.L. 427, § 5.]

Compiler's Notes. The word "Nominating" was substituted for "Nominateing" by the compiler in subsection (c).

33-2.1-4-14. Compensation of Commission members. — Each member of the Judicial Nominating Commission shall serve without compensation for his services, except for per diem and travel expenses and other necessary and reasonable expenses. [IC 33-2.1-4-14, as added by Acts 1971, P.L. 427, § 5.]

33-2.1-4-15. Immunity of commissioners, employees, and staff from civil liability. — The commissioners, employees, and staff of the judicial nominating commission are immune from civil liability for any act or proceeding taken, or communication or statement made, relevant to the evaluation of a candidate under section 7 [IC 33-2.1-4-7] of this chapter. [P.L.281-1989, § 3.]

33-2.1-4-16. Immunity of persons or agencies furnishing information or assistance from civil liability. — An agency, organization, person, or association described in section 7(c) [IC 33-2.1-4-7(c)] of this chapter is immune from civil liability for providing information or assistance in an investigation under section 7 [IC 33-2.1-4-7] of this chapter or for testifying before the judicial nominating commission if:

- (1) The information or testimony is relevant to the evaluation of a candidate under section 7(a) [IC 33-2.1-4-7(a)] of this chapter; and
- (2) The information or testimony is:
 - (A) An expression of opinion; or
 - (B) A statement of fact made without:
 - (i) Knowledge that the statement is false; or
 - (ii) Reckless disregard for the truth.

[P.L.281-1989, § 4.]

33-2.1-4-17. Certification as senior judge. — (a) A person who desires to serve as a senior judge under IC 33-4-8 may apply to the judicial nominating commission for certification as a senior judge to the supreme court.

(b) The judicial nominating commission shall certify to the supreme court a person desiring to serve as a senior judge if the person meets requirements for service as a senior judge set by the supreme court under IC 33-2-1-8.

(c) Except as provided in subsection (d), a person may not be certified under this section if:

- (1) The person:
 - (A) Has not served as a judge or justice; or
 - (B) Is still serving as a judge or justice;
of a court of record in Indiana;
- (2) The person is not available for the minimum period of commitment for service as a senior judge specified by the supreme court in IC 33-2-1-8; or
- (3) The combination of:
 - (A) The compensation for senior judges set under IC 33-4-8-5; and
 - (B) Any retirement benefits that the person is receiving or is entitled to receive;
exceeds the minimum compensation to which judges of the circuit court are entitled under IC 33-13-12.

(d) A person who elects to forgo retirement benefits during the period of commitment as a senior judge may be certified as a senior judge under subsection (b) upon verification by the judicial nominating commission of the availability to the person of such an election. [P.L.334-1989(ss), § 5; P.L.1-1990, § 315.]

CHAPTER 5

RETIREMENT, DISCIPLINE AND REMOVAL OF JUDGES

SECTION.

- 33-2.1-5-1. Retirement.
- 33-2.1-5-2. Meetings of commissioners — Quorum.
- 33-2.1-5-3. Confidentiality of records — Hearings and proceedings open to public.
- 33-2.1-5-4. Filings and testimony privileged.
- 33-2.1-5-5. Complaints — Form.
- 33-2.1-5-6. Complaints against justices or judges — Commission's own motion — Preliminary action — Investigation — Notice.
- 33-2.1-5-7. Notice of formal proceedings — Charge must be specific.
- 33-2.1-5-8. Answer.
- 33-2.1-5-9. Hearing before commission or masters — Appointment of masters — Notice.
- 33-2.1-5-10. Hearing — Procedure.
- 33-2.1-5-11. Rules of evidence.
- 33-2.1-5-12. Defense rights of judge.
- 33-2.1-5-13. Amendments to notice or answer.
- 33-2.1-5-14. Report of hearing by masters.
- 33-2.1-5-15. Objections to masters' report.
- 33-2.1-5-16. Hearing before the commission.
- 33-2.1-5-17. Extension of time for answer or objections.

SECTION.

- 33-2.1-5-18. Hearing for taking additional evidence.
- 33-2.1-5-19. Censure — Retirement — Removal — Commission vote.
- 33-2.1-5-20. Record of all proceedings concerning a judge.
- 33-2.1-5-21. Certification of commission recommendation to Supreme Court.
- 33-2.1-5-22. Review of proceedings — Petition — Procedure.
- 33-2.1-5-23. Jurisdiction and power of commission — Attendance of witnesses — Production of papers — Oaths.
- 33-2.1-5-24. Subpoenas — Issuance by masters — Issuance by judicial qualifications commission.
- 33-2.1-5-25. Contempt — Enforcement of compliance.
- 33-2.1-5-26. Filing papers with chairman of the commission.
- 33-2.1-5-27. Pretrial procedure and hearings — Discovery.
- 33-2.1-5-28. Effect on vested retirement rights.
- 33-2.1-5-29. Scope of law.

33-2.1-5-1. Retirement. — Every justice and judge of the Court of Appeals and Supreme Court shall retire at age seventy-five (75). The Supreme Court is empowered to authorize retired justices and judges to perform temporary judicial duties in any court of the state. [IC 33-2.1-5-1, as added by Acts 1971, P.L. 427, § 6.]

Compiler's Notes. According to IC 33-2.1-1-3(8), "judge" in this chapter includes justices of the Supreme Court as well as judges of the Court of Appeals.

Cross References. Approval or rejection of justices or judges by the electorate, IC 33-2.1-2-6.

33-2.1-5-2. Meetings of commissioners — Quorum. — (a) The commission on judicial qualifications shall meet from time to time as may be necessary to discharge its statutory and constitutional responsibilities. Meetings of the commission for judicial qualifications shall be called in the same manner as prescribed for the judicial nominating commission. A quorum for the transaction of business shall be four members of the commission.

(b) Meetings of the commission are to be held at such place in Indiana, as the chairman of the commission may arrange.

(c) The commission shall act only at a meeting. The commission shall have the power to adopt reasonable and proper rules and regulations for the conduct of its meetings and the discharge of its duties. [IC 33-2.1-5-2, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-3. Confidentiality of records — Hearings and proceedings open to public. — (a) All papers filed with the proceedings before the commission, prior to the institution of formal proceedings as provided in section 7 [IC 33-2.1-5-7] of this chapter shall be confidential unless the justice or judge against whom a recommendation has been filed elects to have such information divulged, or unless the commission elects to answer[,] publicly disseminated statements issued by any complainant.

(b) All papers filed with the commission at the time of, and after, the institution of formal proceedings[,] shall be open for public inspection at all reasonable times. Records of commission proceedings shall be open for public inspection at all reasonable times. All hearings and proceedings before the commission or before the masters appointed pursuant to this article shall, after the institution of formal proceedings[,] be open to the public. [IC 33-2.1-5-3, as added by Acts 1971, P.L. 427, § 6; 1981, P.L. 272, § 9.]

Compiler's Notes. The bracketed comma near the end of subsection (a) was so bracketed by the compiler to indicate apparent surplusage. The bracketed commas in subsection (b) were inserted for clarity by the compiler.

Cross References. Papers filed, or testimony before the commission or masters, privileged, IC 33-2.1-5-4.

33-2.1-5-4. Filings and testimony privileged. — The filing of papers with or the giving of testimony before the commission or before the masters appointed by the Supreme Court pursuant to this article, shall be privileged. [IC 33-2.1-5-4, as added by Acts 1971, P.L. 427, § 6.]

Cross References. Filings at the time of or after institution of formal proceedings, all hearings and proceedings, and the records of commission proceedings, open to the public, IC 33-2.1-5-3.

Filings prior to formal proceedings confidential, IC 33-2.1-5-3.

33-2.1-5-5. Complaints — Form. — Complaints to the commission on judicial qualifications shall be in writing directed to the commission or to any member of the commission. No specified form of complaint shall be required. [IC 33-2.1-5-5, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-6. Complaints against justices or judges — Commission's own motion — Preliminary action — Investigation — Notice. — (a) Any citizen of the state of Indiana shall have the right at all times to complain to the commission on judicial qualifications with reference to the activities, fitness or qualifications of a judge or justice. Upon receipt of any such complaint or request, the commission shall make such initial inquiry as is necessary to determine if a complaint is founded and not frivolous. If the commission determines that the complaint was frivolous or malicious, the commission shall file with the proper court charges against the person or persons bringing such charges.

The commission, without receiving a complaint, may make such an initial inquiry on its own motion.

(b) If the commission deems it necessary as the results of its initial inquiry to conduct an investigation the justice or judge involved shall then be notified of the investigation, the nature of the charge, and the name of the person making the complaint, if any, or that the investigation is on the commission's own motion, and shall be afforded reasonable opportunity in the course of the investigation to present such matters as he may choose. Such notice shall be given by pre-paid registered or certified mail addressed to the judge at his chambers and at his last known address.

If the investigation does not disclose sufficient cause to warrant further proceedings the judge shall be so notified. The commission shall have the power to make investigations by members of the commission or by special investigators employed by the commission; to hold confidential hearings with the person or persons filing the complaint; or with his or their agents or attorneys; and to hold confidential hearings with the judge or justice involved in the complaint.

(c) If the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings and if the complainant subsequently issues any statement or statements of any kind for public dissemination relating to the activities or actions of the commission, the commission shall have the right to answer such statement or statements by reference to so much of the record of its proceedings or results of its investigation as it deems necessary. [IC 33-2.1-5-6, as added by Acts 1971, P.L. 427, § 6.]

Collateral References. Abuse or misuse of contempt power as ground for removal or discipline of judge. 76 A.L.R.4th 982.

Disciplinary action against judge on ground

of abusive or intemperate language or conduct toward attorneys, court personnel, or parties to or witnesses in actions, and the like. 89 A.L.R.4th 278.

33-2.1-5-7. Notice of formal proceedings — Charge must be specific. — (a) After the investigation has been completed if the commission concludes that formal proceedings should be instituted it shall give written notice to the justice or judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

“BEFORE THE INDIANA JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a (Justice) Judge, No.”

(b) The notice shall be issued in the name of the commission and specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within twenty (20) days after service of the notice upon him. No charge shall be sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge. A copy of said notice shall be filed in the office of the commission.

(c) The notice shall be made upon the justice or judge by registered or certified mail addressed to the justice or judge at his chambers and his last known residence. [IC 33-2.1-5-7, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-8. Answer. — Within twenty (20) days after service of the notice of formal proceedings the justice or judge may file with the commission a signed original and one (1) copy of an answer, and shall serve a copy on the counsel by mail. [IC 33-2.1-5-8, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-9. Hearing before commission or masters — Appointment of masters — Notice. — Upon the filing of an answer or upon the expiration of the time for its filing, the commission shall order a hearing to be held before it concerning the discipline, retirement or removal of the justice or judge, or shall request the Supreme Court to appoint three special masters who shall be active or retired justices or judges of courts of record to hear and take evidence in such proceeding and the report thereon to the commission. The commission shall set an approximate time and a place for a hearing before itself or before the masters, and shall give notice of such hearing by registered or certified mail to the judge, the masters and to the counsel at least twenty (20) days prior to the date set. [IC 33-2.1-5-9, as added by Acts 1971, P.L. 427, § 6.]

NOTES TO DECISIONS

Evidence.

Commission on judicial qualifications was not required to view models and pictures of the scene of alleged judicial misconduct prior to filing charges, where the exhibits that respondent requested the commission to view

were circumstantial in nature and went to respondent's defense of the charges, and, pursuant to this section, special masters had been appointed to consider the relevant evidence. In re Young, 522 N.E.2d 386 (Ind. 1988).

33-2.1-5-10. Hearing — Procedure. — (a) At the time and place set for hearing, the commission, or the master when the hearing is before a master, may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The failure of the judge to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, retirement or removal. In any proceeding for involuntary retirement for disability, the failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless it appears that such failure was due to circumstances beyond his control.

(c) The proceedings at the hearing shall be reported verbatim.

(d) When the hearing is before the commission, not less than four members shall be present when the evidence is produced. [IC 33-2.1-5-10, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-11. Rules of evidence. — At a hearing before the commission or masters, the evidentiary rules of the courts of this state shall apply. [IC 33-2.1-5-11, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-12. Defense rights of judge. — (a) In formal proceedings involving the judge's discipline, retirement, or removal, a judge shall have the right and reasonable opportunity to defend against the charges by the

introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter pursuant to section 24 [IC 33-2.1-5-24] of this chapter.

(b) When a transcript of the testimony has been prepared at the expense of the commission, a copy shall be furnished without cost to the judge. The judge has the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, whenever these rules provide for giving notice or sending any matter to the judge, the notice or matter shall be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing, and a copy is mailed to the judge's attorney of record.

(d) If the judge has been adjudged incapacitated under IC 29-3, the guardian may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, a copy of the notice or matter also shall be served, given, or sent to the guardian[.] [IC 33-2.1-5-12, as added by Acts 1971, P.L. 427, § 6; 1981, P.L. 272, § 10; P.L. 33-1989, § 107.]

Compiler's Notes. A bracketed period was substituted for a comma by the compiler at the end of subsection (d) for the purpose of clarity.

33-2.1-5-13. Amendments to notice or answer. — The masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby. [IC 33-2.1-5-13, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-14. Report of hearing by masters. — (a) After the conclusion of the hearing before the masters, they shall promptly prepare and transmit to the commission a report which shall contain a brief statement of the proceedings and their recommended findings of fact with respect to issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, their recommended findings of fact with respect to the allegations in the notice of formal proceedings. The recommended findings of facts by the masters shall not be binding upon the commission even though supported by substantial competent evidence. An original and four copies of the report shall be submitted which shall be accompanied by an original and four copies of a transcript of the proceedings before the masters.

(b) Upon receiving the report of the masters, the commission shall promptly mail a copy of the report and transcript to the judge and also to the counsel. [IC 33-2.1-5-14, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-15. Objections to masters' report. — Within fifteen (15) days after mailing of the copy of the report of masters to the judge, the counsel or the judge may file with the commission an original and one copy of objections to the report of masters, setting forth objections to the report and reasons in opposition to the recommended findings. A copy of objections filed by the counsel shall be sent by the counsel by mail to the judge. A copy of objections filed by the judge shall be sent by the judge by registered or certified mail to the counsel. [IC 33-2.1-5-15, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-16. Hearing before the commission. — If no objections to the report of masters are filed within the time provided, the commission may adopt the recommended findings of the masters without a hearing. If such objections are filed, or if the commission in the absence of such objections proposes to modify or reject the recommended findings of the masters, the commission shall give the judge and the counsel an opportunity to be heard orally before the commission, and written notice of the time and the place of the hearing in the county in which the judge resides shall be mailed to the judge and to the counsel at least ten (10) days prior thereto. [IC 33-2.1-5-16, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-17. Extension of time for answer or objections. — The chairman of the commission may extend the time for filing an answer, for the commencement of a hearing before the commission, and for filing objections to the report of the masters, and the presiding master with the approval of the chairman of the commission may extend the time for the commencement of a hearing before masters. [IC 33-2.1-5-17, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-18. Hearing for taking additional evidence. — The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and the place of the hearing in the county in which the judge resides and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by registered or certified mail to the judge and to the counsel at least ten (10) days prior to the date of hearing. In any case in which masters have been appointed, the hearing of additional evidence shall be before such masters, and the proceedings therein shall be in conformance with the provisions of sections 11 through 18 [IC 33-2.1-5-11 — IC 33-2.1-5-18] of this chapter. [IC 33-2.1-5-18, as added by Acts 1971, P.L. 427, § 6; 1981, P.L. 272, § 11.]

33-2.1-5-19. Censure — Retirement — Removal — Commission vote. — If the commission finds good cause, it shall recommend to the

Supreme Court the censure, retirement or removal of the judge. When the hearing was held before masters the affirmative vote of four (4) members of the commission is required for a recommendation of censure, retirement or removal of a judge. When the hearing was held before the commission without masters the affirmative vote of four (4) members of the commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, retirement or removal of a judge. [IC 33-2.1-5-19, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-20. Record of all proceedings concerning a judge. — The commission shall keep a record of all formal proceedings concerning a judge. The commission's determination shall be entered in the record and notice thereof shall be mailed to the judge and to the counsel. In all formal proceedings resulting in a recommendation to the Supreme Court for censure, retirement or removal, the commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. [IC 33-2.1-5-20, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-21. Certification of commission recommendation to Supreme Court. — Upon making a determination recommending the censure, retirement or removal of a judge, the commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the commission, together with the transcript and findings and conclusions, with the clerk of the Supreme Court and shall promptly mail to the judge and to the counsel notice of such filing, together with a copy of such recommendation, findings and conclusions. [IC 33-2.1-5-21, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-22. Review of proceedings — Petition — Procedure. — (a) A petition to the Supreme Court to modify or reject the recommendation of the commission for censure, retirement or removal of a judge may be filed by the judge within thirty (30) days after the filing with the clerk of the Supreme Court of the certified copy of the commission's recommendation.

The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief together with proof of service on the commission of two copies, and on the counsel of one copy, of the petition and the brief. Within twenty (20) days after service of petitioner's brief the commission shall file a respondent's brief and serve a copy thereof on the judge. Within twenty (20) days after service of respondent's brief the petitioner may file a reply brief, two copies of which shall be served on the commission and one copy shall be served on the counsel.

(b) Failure to file a petition within the time provided shall be deemed a consent to the determination on the merits based upon the record filed by the commission.

(c) To the extent necessary to implement this section and if not inconsistent herewith, the Indiana Rules of Appellate Procedure shall be applicable

to reviews by the Supreme Court of commission proceedings. [IC 33-2.1-5-22, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-23. Jurisdiction and power of commission — Attendance of witnesses — Production of papers — Oaths. — The commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses to take or cause to be taken the deposition of witnesses and to order the production of books, records or other documentary evidence. Any member of the commission and any master shall have the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the commission. [IC 33-2.1-5-23, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-24. Subpoenas — Issuance by masters — Issuance by judicial qualifications commission. — Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceeding shall be issued as follows:

(a) Masters. Subpoenas for the attendance of witnesses and production of documentary evidence before masters, or for discovery in a proceeding before masters, shall be issued by any one of the masters appointed to hear the matter and shall be served in the manner provided by law for the service of process.

(b) Judicial qualifications commission. Subpoenas for the attendance of witnesses and the production of documentary evidence before the commission, or for discovery in a proceeding where masters have not been appointed, shall be issued by the chairman of the commission and shall be served in the manner provided by law for the service of process. [IC 33-2.1-5-24, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-25. Contempt — Enforcement of compliance. — Where in any proceeding before the commission, any witness shall fail or refuse to attend upon subpoena issued by the commission or any of their representatives, or appearing, shall refuse to testify or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of his testimony and the production of the books and papers required shall be enforced by any circuit court of this state. [IC 33-2.1-5-25, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-26. Filing papers with chairman of the commission. — All papers and pleadings filed with the chairman of the commission at his office shall be considered filed with the commission. [IC 33-2.1-5-26, as added by Acts 1971, P.L. 427, § 6.]

33-2.1-5-27. Pretrial procedure and hearings — Discovery. — (a) In all formal proceedings discovery shall be available to the commission and to the judge in accordance with the Indiana Rules of Civil Procedure. Any motions requesting court orders for discovery shall be made to the circuit court judge in the county in which a commission hearing is held.

(b) In all formal proceedings before the commission or masters, the counsel shall furnish to the judge not less than twenty (20) days prior to any hearing the following:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the commission which are relevant to the subject matter of the hearing and which have not previously been furnished the judge.

(2) Copies of all documentary evidence which the counsel expects to offer in evidence at the hearing.

The testimony of any witness whose name and address has not been so furnished to the judge, and documentary evidence, copies of which have not been so furnished to the judge, as provided above, shall not be admissible in evidence at said hearing over the objection of the judge. After formal proceedings have been instituted, the judge may request in writing that the counsel furnish to the judge the names and addresses of all witnesses then or thereafter known to the counsel who have information which may be relevant to any charge against the judge and to any defense of the judge with respect thereto. The counsel shall also furnish copies of such written statements, transcripts of testimony and documentary evidence as are then or thereafter known to the counsel and are then or thereafter in the possession of the counsel or the commission, which are relevant to any such charges or defense and which have not previously been furnished the judge. The counsel shall comply with such request within ten (10) days after receipt of such request and thereafter within ten (10) days after any such information or evidence shall become known to the counsel.

(c) During the course of an investigation by the commission, the judge whose conduct is being investigated can demand in writing that the commission either institute formal proceedings against him or enter a formal finding that there is not probable cause to believe that he is guilty of any misconduct and the commission shall within sixty (60) days after such demand comply therewith. A copy of such demand shall be filed in the Supreme Court and shall be a matter of public record. If, after such demand the commission finds that there is not probable cause, such finding shall be filed in the Supreme Court of Indiana and be a matter of public record. [IC 33-2.1-5-27, as added by Acts 1971, P.L. 427, § 6.]

Cross References. Discovery, scope and methods, Rule TR. 26.

33-2.1-5-28. Effect on vested retirement rights. — Nothing in this article nor in the procedure herein established shall be construed to authorize any encroachment upon or impairment of any vested rights of a judge or surviving spouse of a judge, now or hereafter existing under any constitutional or statutory retirement program. [IC 33-2.1-5-28, as added by Acts 1971, P.L. 427, § 6; 1975, P.L. 21, § 24.]

33-2.1-5-29. Scope of law. — This chapter applies to all proceedings before the commission on judicial qualifications and masters involving the censure, retirement or removal of justices of the Supreme Court, [and] judges of the Court of Appeals, as provided by article 7, section 11 of the Indiana Constitution. [IC 33-2.1-5-29, as added by Acts 1971, P.L. 427, § 6; 1981, P.L. 272, § 12.]

Compiler's Notes. The bracketed word "and" was inserted for clarity by the compiler.

CHAPTER 6

DISCIPLINE OF JUDGES OF SUPERIOR, PROBATE, JUVENILE AND CRIMINAL COURTS

SECTION.

- 33-2.1-6-1. Purpose.
- 33-2.1-6-2. Commission on judicial qualifications.
- 33-2.1-6-3. Jurisdiction of commission — County commissioners.
- 33-2.1-6-4. Grounds for removal.
- 33-2.1-6-5. Meetings of commissioners.
- 33-2.1-6-6. Confidentiality of proceedings.
- 33-2.1-6-7. Filings and testimony privileged.
- 33-2.1-6-8. Filing of complaints shall be in writing and verified.
- 33-2.1-6-9. Request of justice or judge to retire — Complaint by citizen or on commission's own motion — Investigation.
- 33-2.1-6-10. Notice of formal proceedings — Charge must be specific.
- 33-2.1-6-11. Answer.
- 33-2.1-6-12. Hearing before commission or masters — Appointment of masters — Notice.
- 33-2.1-6-13. Hearing — Procedure.
- 33-2.1-6-14. Rules of evidence.
- 33-2.1-6-15. Defense rights of a judge.
- 33-2.1-6-16. Amendments to notice or answer.
- 33-2.1-6-17. Report of hearing by masters.
- 33-2.1-6-18. Objections to report of masters.

SECTION.

- 33-2.1-6-19. Hearing before the commission.
- 33-2.1-6-20. Extension of time for answer, objections or commencement of hearing.
- 33-2.1-6-21. Hearing for additional evidence.
- 33-2.1-6-22. Discipline — Retirement — Removal — Commission vote.
- 33-2.1-6-23. Record of commission proceedings concerning a judge.
- 33-2.1-6-24. Certification of commission recommendation to Supreme Court.
- 33-2.1-6-25. Review of commission proceedings — Petition — Procedure.
- 33-2.1-6-26. Jurisdiction and powers of the commission — Attendance of witnesses — Production of papers — Oaths.
- 33-2.1-6-27. Subpoenas — Issuance by masters — Issuance by judicial qualifications commission.
- 33-2.1-6-28. Contempt — Enforcement of compliance.
- 33-2.1-6-29. Filing papers with chairman of the commission.
- 33-2.1-6-30. Pretrial procedure and hearings — Discovery.

33-2.1-6-1. Purpose. — It is the purpose of this chapter to provide that judges of superior, probate, juvenile or criminal courts in certain counties as set forth in section 3 [IC 33-2.1-6-3] of this chapter shall be subject to disciplinary action for the grounds and in the manner set forth in this chapter. It is the further purpose of this chapter to provide that the commission on judicial qualifications for the Supreme Court and Court of Appeals, and the members thereof, shall constitute the commission on judicial qualifications for judges of superior, probate, juvenile and criminal courts in certain counties as set forth in section three of this chapter. [IC 33-2.1-6-1, as added by Acts 1973, P.L. 305, § 1.]

Cross References. Commission on judicial qualifications, IC 33-2.1-5-1 — IC 33-2.1-5-29.

NOTES TO DECISIONS

In General.

The jurisdictional grant of disciplinary power extends to all judges of statutory courts, is not limited by the listing in this section, and any attempt by the legislature to

so limit the disciplinary power vested in the Supreme Court by the constitution would be void. *In re Evrard*, 263 Ind. 423, 317 N.E.2d 841, 44 Ind. Dec. 389 (1974).

Collateral References. Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness. 82 A.L.R.4th 567.

Disciplinary action against judge on ground

of abusive or intemperate language or conduct toward attorneys, court personnel, or parties to or witnesses in actions, and the like. 89 A.L.R.4th 278.

33-2.1-6-2. Commission on judicial qualifications. — The commission on judicial qualifications created by article 7, section 9 of the Constitution of Indiana shall be the commission on judicial qualifications for judges of superior and probate courts in certain counties as set forth in section 3 [IC 33-2.1-6-3] of this chapter, and the members of the commission on judicial qualifications for the court of appeals and supreme court shall serve as the members of the commission on judicial qualifications for judges of superior and probate courts. The definitions to be used in the operation of the commission on judicial qualifications shall be the same as those definitions used for the commission on judicial qualifications for the supreme court and court of appeals; Provided That, the term “judge” shall mean a judge of a superior or probate court. [IC 33-2.1-6-2, as added by Acts 1973, P.L. 305, § 1; 1981, P.L. 272, § 13.]

Collateral References. First Amendment protection for judges or government attorneys

subjected to discharge, transfer, or discipline because of speech. 108 A.L.R. Fed. 117.

33-2.1-6-3. Jurisdiction of commission — County commissioners. — The commission on judicial qualifications created pursuant to section 2 [IC 33-2.1-6-2] of this chapter shall exercise disciplinary jurisdiction over judges of superior and probate courts; Provided That, in any county of this state where a commission on judicial qualifications was in operation by virtue of law before July 26, 1973, the commission on judicial qualifications shall cease to exercise disciplinary jurisdiction concerning the courts of any such county and such jurisdiction shall be exercised by the commission on judicial qualifications created pursuant to section 2 of this chapter; Provided however That, wherever the law creating a commission on judicial qualifications in any county of this state before July 26, 1973, precluded judges subject to its disciplinary jurisdiction from participating in political activities due to the fact that said judges are selected by a merit selection system said judges shall continue to be precluded from such participation as if such activity were grounds for removal pursuant to this chapter; and Provided further That, the judicial nominating commissions in operation in any

county of this state by virtue of law before July 26, 1973, shall not be in any way affected in their operation or function. [IC 33-2.1-6-3, as added by Acts 1973, P.L. 305, § 1; 1981, P.L. 272, § 14.]

33-2.1-6-4. Grounds for removal. — Each judge of those courts included in section 3 [IC 33-2.1-6-3] of this chapter shall be disqualified from acting as a judicial officer, without loss of salary while there is pending (1) an indictment or information charging him in any court in the United States with a crime punishable as a felony under the laws of Indiana or the United States, or (2) a recommendation to the Supreme Court by the commission on judicial qualifications for his removal or retirement. On recommendation of the commission on judicial qualifications or on its own motion the Supreme Court may suspend such judge from office without salary when in any court in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under the laws of Indiana or the United States, or of any other crime that involves moral turpitude under the law. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final, the Supreme Court shall remove him from office.

On recommendations of the commission on judicial qualifications the Supreme Court may (1) retire such judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove such judge, for action occurring not more than six (6) years prior to the commencement of his current term, when such action constitutes willful misconduct in office, willful or persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A judge so retired by the Supreme Court shall be considered to have retired voluntarily. A judge so removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from the practice of law in this state. [IC 33-2.1-6-4, as added by Acts 1973, P.L. 305, § 1.]

NOTES TO DECISIONS

ANALYSIS

Driving while intoxicated.
Failure to relinquish power of attorney.
Removal proper.
Statute of limitations.

Driving While Intoxicated.

Operating a motor vehicle while intoxicated, in violation of the law, is conduct prejudicial to the administration of justice thereby bringing a superior court judge's judicial office into disrepute for which the agreed discipline, a public censure, is appropriate. In re Alsip, 499 N.E.2d 1102 (Ind. 1986).

Failure to Relinquish Power of Attorney.

Where a judge continued to keep and exercise a power of attorney for the benefit of a non-family member, in clear violation of Canon 5 of the Code of Judicial Conduct, such conduct is conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and justifies a 90-day suspension from office without salary, and from the practice of law and a bar to seeking reelection to the position of judge in 1992. In re Hammond, 559 N.E.2d 310 (Ind. 1990).

Removal Proper.

A judge's solicitation, acceptance, and non-disclosure of a \$2,000 loan from an attorney practicing in his court, witness intimidation

Removal Proper. (Cont'd)

through the judge's deliberate misrepresentation of the witness' criminal record, his orchestration of a scheme to publicize such lies, his use of his teenage son in this plot and his propensity for filing inadequate or false financial reports, warranted his removal from the office of Circuit Judge. *In re Drury*, 602 N.E.2d 1000 (Ind. 1992).

Statute of Limitations.

The six-year statute of limitations provision

of this section tracks the language of Ind. Const., art. 7, § 11. *In re Arredondo*, 522 N.E.2d 389 (Ind. 1988).

Despite the fact that this section does not explicitly apply to circuit court judges, application of its six-year statute of limitations to charges against circuit judges is consistent with the decisions made by the people through the constitution and by the legislature through enactment of this section. *In re Arredondo*, 522 N.E.2d 389 (Ind. 1988).

Collateral References. Abuse or misuse of contempt power as ground for removal or discipline of judge. 76 A.L.R.4th 982.

Removal or discipline of state judge for neglect of, or failure to perform, judicial duties. 87 A.L.R.4th 727.

33-2.1-6-5. Meetings of commissioners. — (a) The commission on judicial qualifications shall meet from time to time as may be necessary to discharge its statutory responsibilities. Meetings of the commission on judicial qualifications shall be called in the same manner as prescribed for the judicial nominating commission of the Supreme Court and Court of Appeals. A quorum for the transaction of business shall be four (4) members of the commission.

(b) Meetings of the commission are to be held at such place in Indiana, as the chairman of the commission may arrange.

(c) The commission shall act only at a meeting. The commission shall have the power to adopt reasonable and proper rules and regulations for the conduct of its meetings and the discharge of its duties. [IC 33-2.1-6-5, as added by Acts 1973, P.L. 305, § 1.]

Cross References. Judicial nominating commission meetings, IC 33-2.1-4-8.

33-2.1-6-6. Confidentiality of proceedings. — All papers filed with and proceedings before the commission prior to the institution of formal proceedings as provided herein, shall be confidential unless the judge against whom a recommendation has been filed elects to have such information divulged, or unless the commission elects to answer publicly disseminated statements issued by any complainant. All papers filed with the commission at the time of, and after, the institution of formal proceedings shall be open for public inspection at all reasonable times. Records of commission proceedings shall be open for public inspection at all reasonable times. All hearings and proceedings before the commission shall, after the institution of formal proceedings, be open to the public. [IC 33-2.1-6-6, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-7. Filings and testimony privileged. — The filing of papers with or the giving of testimony before the commission or before the masters appointed by the Supreme Court pursuant to this chapter, shall be privileged. [IC 33-2.1-6-7, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-8. Filing of complaints shall be in writing and verified. —

Any citizen of the state of Indiana may file with the commission on judicial qualifications a complaint on the judicial fitness of a judge of a superior, criminal, juvenile or probate court of this state. Complaints directed to the commission or to any member of the commission concerning a judge subject to the disciplinary jurisdiction of the commission on judicial qualifications created pursuant to this chapter shall be in writing and verified. No specified form of complaint shall be required. [IC 33-2.1-6-8, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-9. Request of justice or judge to retire — Complaint by citizen or on commission's own motion — Investigation. — (a) Any judge may request that he be retired because of disability.

(b) Any citizen of the state of Indiana shall have the right at all times to complain to the commission on judicial qualifications with reference to the activities, fitness or qualifications of a judge. Upon receipt of any such complaint or request, the commission shall make such initial inquiry as is necessary to determine if a complaint is founded and not frivolous.

The commission, without receiving a complaint, may take such an initial inquiry on its own motion.

(c) If the commission deems it necessary, as the result of its initial inquiry, to conduct an investigation the judge involved shall then be notified of the investigation, the nature of the charge, and the name of the person making the complaint, if any, or that the investigation is on the commission's own motion, and shall be afforded reasonable opportunity in the court of the investigation to present such matters as he may choose. Such notice shall be given by pre-paid registered or certified mail addressed to the judge at his chambers and at his last known address.

If the investigation does not disclose sufficient cause to warrant further proceedings the judge shall be so notified. The commission shall have the power to make investigations by members of the commission or by special investigators employed by the commission; to hold confidential hearings with his or their agents or attorneys and to hold confidential hearings with the judge or judges involved.

(d) If the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings and if the complainant subsequently issues any statement or statements for public dissemination relating to the activities or actions of the commission, the commission shall have the right to answer such statement or statements by reference to so much of the record of its proceedings or results of its investigations as it deems necessary. [IC 33-2.1-6-9, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-10. Notice of formal proceedings — Charge must be specific. — (a) After the investigation has been completed, if the commission concludes that formal proceedings should be instituted it shall give written

notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled: “BEFORE THE INDIANA JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No.”

(b) The notice shall be issued in the name of the commission and specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within twenty (20) days after service of notice upon him. No charge shall be sufficient if it merely recites the general language of the original complaint but must specify the facts relied upon to support a particular charge.

(c) The notice shall be made upon the judge by registered or certified mail addressed to the judge at his chambers and at his last known residence. [IC 33-2.1-6-10, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-11. Answer. — Within twenty (20) days after service of the notice of formal proceedings the judge may file with the commission a signed original and one (1) copy of an answer, and shall serve a copy on the counsel by mail. [IC 33-2.1-6-11, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-12. Hearing before commission or masters — Appointment of masters — Notice. — Upon the filing of an answer or upon the expiration of the time for its filing, the commission shall order a hearing to be held before it concerning the discipline, retirement or removal of the judge, or shall request the Supreme Court to appoint three (3) special masters who shall be active or retired justices or judges of courts of record to hear and take evidence in such matter and to report thereon to the commission. The commission shall set a time and place in the state in which the judge involved resides for a hearing before itself or before the master [masters], and shall give notice of such hearing by mail to the judge, the masters and to the counsel at least twenty (20) days prior to the date set. [IC 33-2.1-6-12, as added by Acts 1973, P.L. 305, § 1.]

Compiler’s Notes. The bracketed word “masters” in the last sentence was inserted by the compiler to correct an apparent error.

33-2.1-6-13. Hearing — Procedure. — (a) At the time and place set for hearing, the commission, or the masters when the hearing is before the masters, may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The failure of the judge to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the facts alleged or constitute grounds for censure, retirement or removal. In any proceeding for involuntary retirement for disability, the failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless it appears that such failure was due to circumstances beyond his control.

(c) The proceedings at the hearing shall be reported verbatim.

(d) When the hearing is before the commission, not less than fourmembers shall be present when the evidence is produced. [IC 33-2.1-6-13, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-14. Rules of evidence. — At a hearing before the commission or masters, the evidentiary rules of the courts of this state shall apply. [IC 33-2.1-6-14, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-15. Defense rights of a judge. — (a) In formal proceedings involving the judge's discipline, retirement, or removal, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the expense of the commission, a copy shall be furnished without cost to the judge. The judge has the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, whenever these rules provide for giving notice or sending any matter to the judge, the notice or matter shall be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing, and a copy is mailed to the judge's attorney of record.

(d) If the judge has been adjudged incapacitated under IC 29-3, the guardian may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, a copy of the notice or matter also shall be served, given, or sent to the guardian. [IC 33-2.1-6-15, as added by Acts 1973, P.L. 305, § 1; P.L.33-1989, § 108.]

33-2.1-6-16. Amendments to notice or answer. — The masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby. [IC 33-2.1-6-16, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-17. Report of hearing by masters. — (a) After the conclusion of the hearing before the masters, they shall promptly prepare and transmit to the commission a report which shall contain a brief statement of the proceedings and their recommended findings of fact with respect to issues

presented by the notice of formal proceedings and the answer thereto, or if there be no answer, their recommended findings of fact with respect to the allegations in the notice of formal proceedings. The recommended findings of facts by the masters shall not be binding upon the commission even though supported by substantial competent evidence. An original and four (4) copies of the report shall be submitted which shall be accompanied by an original and four (4) copies of a transcript of the proceedings before the masters.

(b) Upon receiving the report of the masters, the commission shall promptly mail a copy of the report and transcript to the judge and also to the counsel. [IC 33-2.1-6-17, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-18. Objections to report of masters. — (a) Within fifteen (15) days after mailing of the copy of the report of masters to the judge, the counsel or the judge may file with the commission an original and one (1) copy of objections to the report of masters, setting forth objections to the report and reasons in opposition to the recommended findings. A copy of objections filed by the counsel shall be sent by the counsel by mail to the judge. A copy of objections filed by the judge shall be sent by the judge by mail to the counsel. [IC 33-2.1-6-18, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-19. Hearing before the commission. — If no objections to the report of masters are filed within the time provided, the commission may adopt the recommended findings of the masters without a hearing. If such objections are filed, or if the commission in the absence of such objections proposes to modify or reject the recommended findings of the masters, the commission shall give the judge and the counsel an opportunity to be heard orally before the commission, and written notice of the time and the place of the hearing in the county in which the judge resides shall be mailed to the judge and to the counsel at least ten (10) days prior thereto. [IC 33-2.1-6-19, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-20. Extension of time for answer, objections or commencement of hearing. — The chairman of the commission may extend the time for filing an answer, for the commencement of a hearing before the commission, and for filing objections to the report of the masters, and the presiding master with the approval of the chairman of the commission may extend the time for the commencement of a hearing before masters. [IC 33-2.1-6-20, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-21. Hearing for additional evidence. — The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the hearing in the county in which the judge resides and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge and to the counsel at least ten (10) days prior to the date of hearing.

In any case in which masters have been appointed, the hearing of additional evidence shall be before such masters, and the proceedings

therein shall be in conformance with the provisions of this chapter. [IC 33-2.1-6-21, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-22. Discipline — Retirement — Removal — Commission vote. — If the commission finds good cause, it shall recommend to the Supreme Court the discipline, retirement or removal of the judge. When the hearing was held before masters the affirmative vote of four (4) members of the commission is required for a recommendation of discipline, retirement or removal of a judge. When the hearing was held before the commission without masters the affirmative vote of four (4) members of the commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, retirement or removal of a judge. [IC 33-2.1-6-22, as added by Acts 1973, P.L. 305, § 1.]

NOTES TO DECISIONS

Discipline.

The judge's conduct in obtaining the temporary change in custody through ex parte communication with another judge having jurisdiction of the judge's marriage dissolution

case constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute, warranting a public reprimand. In *re Sauce*, 561 N.E.2d 751 (Ind. 1990).

33-2.1-6-23. Record of commission proceedings concerning a judge. — The commission shall keep a record of all formal proceedings concerning a judge. The commission's determination shall be entered in the record and notice thereof shall be mailed to the judge and to the counsel. In all formal proceedings resulting in a recommendation to the Supreme Court for discipline, retirement or removal, the commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. [IC 33-2.1-6-23, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-24. Certification of commission recommendation to Supreme Court. — Upon making a determination recommending the discipline, retirement or removal of a judge, the commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court and shall promptly mail to the judge and to the counsel notice of such filing, together with a copy of such recommendation, findings and conclusions. [IC 33-2.1-6-24, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-25. Review of commission proceedings — Petition — Procedure. — (a) A petition to the Supreme Court to modify or reject the recommendation of the commission for discipline, retirement or removal of a judge may be filed by the judge within thirty (30) days after the filing with the clerk of the Supreme Court of the certified copy of the commission's recommendation.

The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief together with proof of service on the commission of two (2) copies and on the counsel of one (1) copy, of the petition and the brief. Within twenty (20) days after service of petitioner's brief the commission shall file a respondent's brief and serve a copy thereof on the judge. Within twenty (20) days after service of respondent's brief the petitioner may file a reply brief, two (2) copies of which shall be served on the commission and one (1) copy shall be served on the counsel.

(b) Failure to file a petition within the time provided shall be deemed a consent to the determination on the merits based upon the record filed by the commission.

(c) To the extent necessary to implement this section and if not inconsistent herewith, the Indiana Rules of Appellate Procedure shall be applicable to reviews by the Supreme Court of commission proceedings. [IC 33-2.1-6-25, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-26. Jurisdiction and powers of the commission — Attendance of witnesses — Production of papers — Oaths. — The commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses and to order the production of books, records or other documentary evidence. Any member of the commission and any master shall have the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the commission. [IC 33-2.1-6-26, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-27. Subpoenas — Issuance by masters — Issuance by judicial qualifications commission. — Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceedings shall be issued as follows:

(a) Masters. Subpoenas for the attendance of witnesses and production of documentary evidence before masters, or for discovery in a proceeding before masters, shall be issued by any one of the masters appointed to hear the matter and shall be served in the manner provided by law for the service of process.

(b) Judicial qualifications commission. Subpoenas for the attendance of witnesses and the production of documentary evidence before the commission, or for discovery in a proceeding where masters have not been appointed, shall be issued by the chairman of the commission and shall be served in the manner provided by law for the service of subpoena. [IC 33-2.1-6-27, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-28. Contempt — Enforcement of compliance. — Where in any proceeding before the commission, any witness shall fail or refuse to attend upon a subpoena issued by the commission or any of their representatives, or appearing, shall refuse to testify or to produce any books and

papers the production of which is called for by the subpoena, the attendance of any witness and the giving of testimony and the production of the books and papers required shall be enforced by any circuit court of this state. [IC 33-2.1-6-28, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-29. Filing papers with chairman of the commission. — All papers and pleadings filed with the chairman of the commission at his office shall be considered filed with the commission. [IC 33-2.1-6-29, as added by Acts 1973, P.L. 305, § 1.]

33-2.1-6-30. Pretrial procedure and hearings — Discovery. — (a) In all formal proceedings discovery shall be available to the commission and to the judge in accordance with the Indiana Rules of Civil Procedure. Any motions requesting court orders for discovery shall be made to the circuit court judge in the county in which a commission hearing is held.

(b) In all formal proceedings before the commission or masters, the counsel shall furnish to the judge not less than twenty (20) days prior to any hearing the following:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the commission which are relevant to the subject matter of the hearing and which have not previously been furnished the judge.

(2) Copies of all documentary evidence which the counsel expects to offer in evidence at the hearing. The testimony of any witness whose name and address has not been so furnished to the judge, and documentary evidence, copies of which have not been so furnished to the judge, as provided above, shall not be admissible in evidence at said hearing over the objection of the judge. After formal proceedings have been instituted, the judge may request in writing that the counsel furnish to the judge the names and addresses of all witnesses then or thereafter known to the counsel who have information which may be relevant to any charge against the judge and to any defense of the judge with respect thereto. The counsel shall also furnish copies of such written statements, transcripts of testimony and documentary evidence as are then or thereafter in the possession of the counsel of the commission, which are relevant to any such charge or defense and which have not previously been furnished to the judge. The counsel shall comply with such request within ten (10) days after receipt of such request and thereafter within ten (10) days after any such information or evidence shall become known to the counsel.

(c) During the course of an investigation by the commission, the judge whose conduct is being investigated can demand in writing that the commission either institute formal proceedings against him or enter a formal finding that there is not probable cause to believe that he is guilty of misconduct and the commission shall within sixty (60) days after such demand comply therewith. A copy of such demand shall be filed in the

Supreme Court and shall be a matter of public record. If, after such demand, the commission finds there is not probable cause, such finding shall be filed in the Supreme Court of Indiana and be a matter of public record. [IC 33-2.1-6-30, as added by Acts 1973, P.L. 305, § 1.]

Cross References. Discovery, scope and methods, Rule TR. 26.

CHAPTER 7

OFFICE OF JUDICIAL ADMINISTRATION

SECTION.

- 33-2.1-7-1. Creation — Divisions.
- 33-2.1-7-2. Appointment of personnel — Duties — Salaries.
- 33-2.1-7-3. Powers and duties of state court administration division.
- 33-2.1-7-3.1. Office of guardian ad litem and court appointed special advocate services — County use of matching funds for guardian ad litem and court appointed special advocate programs.
- 33-2.1-7-3.2. Formula for annual grants to counties with guardian ad li-

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- tem or court appointed special advocate programs.
- 33-2.1-7-4. Duties of Supreme Court administration division.
- 33-2.1-7-5. Title of report — Distribution of copies.
- 33-2.1-7-6. Enforcement by rule of court.
- 33-2.1-7-7. Appointment of staff by courts not affected.
- 33-2.1-7-8. Trial court districts — Temporary transfer of judges.
- 33-2.1-7-9. Travel expenses for transferred judges.

33-2.1-7-1. Creation — Divisions. — There is hereby created, within the office of chief justice of the state, the office of judicial administration. The office shall consist of two (2) divisions, entitled Supreme Court administration and state court administration. The division of Supreme Court administration shall be headed by a Supreme Court administrator; the division of state court administration shall be headed by an executive director. [IC 33-2.1-7-1, as added by Acts 1975, P.L. 303, § 1.]

Cited: Lake County Council v. Arrendondo, 266 Ind. 318, 57 Ind. Dec. 469, 363 N.E.2d 218 (1977).

33-2.1-7-2. Appointment of personnel — Duties — Salaries. — The personnel of the office of judicial administration shall be appointed by and serve at the pleasure of the chief justice of the state. They shall devote full time to their official duties and shall not engage in any other profession for profit. Their salaries shall be fixed by the Supreme Court subject to approval by the state budget agency. [IC 33-2.1-7-2, as added by Acts 1975, P.L. 303, § 1.]

33-2.1-7-3. Powers and duties of state court administration division. — (a) The division of state court administration shall do the following:
(1) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.

(2) Collect and compile statistical data and other information on the judicial work of the courts in the state. All justices of the supreme court, judges of the court of appeals, judges of all trial courts in the state, and any city or town courts, whether having general or special jurisdiction, court clerks, court reporters, and other officers and employees of the courts shall, upon notice by the executive director and in compliance with procedures prescribed by the executive director, furnish the executive director such information as is requested concerning the nature and volume of judicial business. The information reports shall include, but not be limited to, the volume, condition, and type of business conducted by the courts, the methods of procedure therein, the work accomplished by the courts, the receipt and expenditure of public money by and for the operation of the courts, and the methods of disposition or termination of cases.

(3) Prepare and publish reports, not less than one (1) nor more than two (2) times per year, on the nature and volume of judicial work performed by the courts as determined by the information required in subdivision (2).

(4) Serve the judicial nominating commission and the judicial qualifications commission in the performance by the commissions of their statutory and constitutional functions.

(5) Administer the civil legal aid fund as required by IC 33-2.1-11.

(b) All forms to be used in the gathering of data must be approved by the supreme court, and shall be distributed to all judges and clerks prior to the start of each period for which reports are required. [IC 33-2.1-7-3, as added by Acts 1975, P.L. 303, § 1; 1979, P.L. 168, § 6; P.L.4-1978, § 13; P.L.300-1987, § 2; P.L.202-1997, § 1.]

Effective Dates. P.L.300-1987, § 8. January 1, 1988.

33-2.1-7-3.1. Office of guardian ad litem and court appointed special advocate services — County use of matching funds for guardian ad litem and court appointed special advocate programs. — (a) The division of state court administration shall establish and administer an office of guardian ad litem and court appointed special advocate services. The division shall use money it receives from the state general fund to administer the office. If funds for guardian ad litem and court appointed special advocate programs are appropriated by the general assembly, the division shall provide matching funds to counties that are required to implement and administer, in courts with juvenile jurisdiction, a guardian ad litem and court appointed special advocate program for children who are alleged to be victims of child abuse or neglect under IC 31-33. However, the division may not use more than seventy-five thousand dollars (\$75,000) per state fiscal year for administration of the program. Matching funds must be distributed in accordance with the provisions of section 3.2 [IC 33-2.1-7-3.2] of this chapter. A county may use these matching funds to supplement amounts that are collected as fees under IC 31-40-3-1 and used for the operation of guardian ad litem and court appointed special advocate

programs. The division may use its administrative fund to provide training services and communication services for local officials and local guardian ad litem and court appointed special advocate programs. The county fiscal body shall appropriate adequate funds for the county to be eligible for matching funds under this section.

(b) Matching funds provided to a county under this provision shall be used for guardian ad litem and court appointed special advocate programs and may be deposited in the county's guardian ad litem or court appointed special advocate fund described in IC 31-40-3.

(c) Any matching funds appropriated to the division of state court administration that are not used before July 1 of each fiscal year do not revert but shall be redistributed under this section on July 1. The division shall redistribute the funds among counties providing guardian ad litem and court appointed special advocate programs that are entitled to receive matching funds.

(d) Money appropriated to the division of state court administration does not revert at the end of a state fiscal year to the state general fund. [P.L.155-1990, § 29; P.L.30-1991, § 8; P.L.1-1992, § 168; P.L.1-1997, § 120.]

Effective Dates. P.L.155-1990, § 33. July 1, 1991.

33-2.1-7-3.2. Formula for annual grants to counties with guardian ad litem or court appointed special advocate programs. — (a) If appropriated by the general assembly, the division of state court administration shall grant to each county with a guardian ad litem or court appointed special advocate program an annual appropriation calculated under the following formula:

STEP ONE: Deduct the annual appropriation to the division of state court administration for administrative expenses.

STEP TWO: Ascertain the number of children in need of services in each county, as determined by the division of family and children, during the preceding state fiscal year.

STEP THREE: Divide the result under STEP TWO by the total number of children in need of services in Indiana, as determined by the division of family and children during the preceding fiscal year.

STEP FOUR: Multiply the result under STEP THREE by the remaining state match appropriation.

(b) If, under subsection (a), a county's grant would result in a grant of two thousand dollars (\$2,000) or less, the county shall receive a grant of two thousand dollars (\$2,000). After subtracting the state match appropriation distributed to these counties from the total remaining state appropriation, the division of state court administration shall distribute the remaining state appropriation under the following formula:

STEP ONE: Subtract the total number of children in need of services in the counties covered under subsection (a) from the total number of children in need of services in Indiana as determined by the division of family and children during the preceding state fiscal year.

STEP TWO: Divide the number of children in need of services in each of the counties not covered under subsection (a) by the result under STEP ONE.

STEP THREE: Multiply the result under STEP TWO by the total remaining state match appropriation.

STEP FOUR: Distribute the result under STEP THREE to each county not covered under subsection (a). [P.L.30-1991, § 9; P.L.2-1992, § 851; P.L.55-1997, § 36.]

33-2.1-7-4. Duties of Supreme Court administration division. —

The division of Supreme Court administration shall perform such legal and administrative duties for the justices as are determined by the justices. [IC 33-2.1-7-4, as added by Acts 1975, P.L. 303, § 1.]

33-2.1-7-5. Title of report — Distribution of copies. — The reports required by section 3(a)(3) [IC 33-2.1-7-3(a)(3)] of this chapter shall be directed to the commission on judicial qualifications, the chief justice of the state, the clerk of the supreme court, and the Indiana legislative council, and shall be accessible to the judicial officers of the various courts and to the general public. The reports shall be titled "The Indiana Judicial Report". [IC 33-2.1-7-5, as added by Acts 1975, P.L. 303, § 1; P.L.4-1983, § 14; P.L.3-1989, § 187.]

33-2.1-7-6. Enforcement by rule of court. — The Supreme Court shall provide by rule of the court for the enforcement of this chapter. [IC 33-2.1-7-6, as added by Acts 1975, P.L. 303, § 1.]

33-2.1-7-7. Appointment of staff by courts not affected. — The present authority of the courts to appoint administrative or clerical personnel is not limited by any provision of this chapter. [IC 33-2.1-7-7, as added by Acts 1975, P.L. 303, § 1.]

33-2.1-7-8. Trial court districts — Temporary transfer of judges. — The executive director shall with the approval of the Supreme Court divide the state geographically into no less than eight (8) trial court districts. On the basis of relevant information compiled by the executive director concerning the volume and nature of judicial workload, the executive director shall recommend to the Supreme Court the temporary transfer of any judge or judges. The Supreme Court shall consider the recommendation and temporarily transfer any judge of a trial court of general or special jurisdiction to another court if the temporary transfer is determined to be beneficial to facilitate the judicial work of the court to which the judge is transferred without placing an undue burden on the court from which the judge is transferred. However, no judge shall be temporarily transferred to a court in another county within the district he normally serves which, at its nearest point, is more than forty (40) miles distant from the seat of the county the judge normally serves unless such judge consents to the transfer. [IC 33-2.1-7-8, as added by Acts 1975, P.L. 303, § 1.]

33-2.1-7-9. Travel expenses for transferred judges. — Any judge transferred to a court in another county shall be paid travel and other necessary expenses by the county to which he is transferred. An allowance for expenses shall be certified by the chief justice in duplicate to the auditor of the county. The certificate of allowance shall be prima facie evidence of the correctness of the claims, and no item or items of expenses certified to be correct shall be disallowed by the board of commissioners of that county. [IC 33-2.1-7-9, as added by Acts 1975, P.L. 303, § 1.]

CHAPTER 8

ETHICS AND CONFLICT OF INTEREST FOR JUDGES AND PROSECUTING ATTORNEYS

SECTION.

- 33-2.1-8-1. Definitions.
- 33-2.1-8-2. Prohibition against participation in cause involving economic interest.
- 33-2.1-8-2.5. Influence on justice, judge, or prosecuting attorney by matters considered by legislators.
- 33-2.1-8-3. Disclosure of economic interest.
- 33-2.1-8-4. Compensation based on confidential information prohibited.
- 33-2.1-8-5. Excessive proceeds of sale, lease or service transaction prohibited.

SECTION.

- 33-2.1-8-6. Filing of annual statement of economic interests.
- 33-2.1-8-7. Deadline for filing statement of economic interests.
- 33-2.1-8-8. Contents of statement of economic interests.
- 33-2.1-8-9. [Repealed.]
- 33-2.1-8-10. Unauthorized activities of supreme court justice or court of appeals judge.

33-2.1-8-1. Definitions. — (a) As used in this chapter, “cause” means a trial, hearing, arraignment, controversy, appeal, case, or any business performed within the official duty of a justice, judge, or prosecuting attorney.

(b) As used in this chapter, “compensation” means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(c) As used in this chapter, “economic interest” means substantial financial interest in investments, employment, awarding of contracts, purchases, leases, sales, or similar matters.

(d) As used in this chapter, “employer” means any person from whom the judge, justice, or prosecuting attorney or that person’s spouse receives any nonstate income.

(e) As used in this chapter, “information of a confidential nature” means information obtained by reason of the position or office held and which information has not been, or will not be, communicated to the general public.

(f) As used in this chapter, “person” means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(g) As used in this chapter, “judge” means a judge of the court of appeals or the tax court, or of a circuit, superior, municipal, county, or probate court. A judge pro tempore, commissioner, or hearing officer shall be considered a

judge if that person shall sit more than twenty (20) days other than Saturdays, Sundays, or holidays in one (1) calendar year as judge, commissioner, or hearing officer in any court. [IC 33-2.1-8-1, as added by Acts 1975, P.L. 304, § 1; 1981, P.L. 272, § 15; P.L.166-1984, § 1; P.L.3-1987, § 527; P.L.8-1993, § 499.]

33-2.1-8-2. Prohibition against participation in cause involving economic interest. — A justice, judge or prosecuting attorney may not participate in any cause which involves any matter in which the justice, judge or prosecuting attorney or any member of his family has an economic interest. [IC 33-2.1-8-2, as added by Acts 1975, P.L. 304, § 1.]

NOTES TO DECISIONS

When Judge Must Participate.

Where self-recusal by each justice would result in no court to exercise the judicial power, judges having an interest in a case

must hear the case if there is no other proper forum in which the case can be heard. Board of Trustees v. Hill, 472 N.E.2d 204 (Ind. 1985).

33-2.1-8-2.5. Influence on justice, judge, or prosecuting attorney by matters considered by legislators. — The actions of a justice, judge, or prosecuting attorney in any cause that involves a legislator or a member of a legislator's family may not be influenced by any matters previously considered or to be considered by the legislator in the general assembly. [P.L.279-1995, § 1.]

33-2.1-8-3. Disclosure of economic interest. — A justice, judge or prosecuting attorney shall promptly and fully disclose any economic interest or other personal stake he or a member of his family may have in a cause in which he is a participant. [IC 33-2.1-8-3, as added by Acts 1975, P.L. 304, § 1.]

Cited: Board of Trustees v. Hill, 472 N.E.2d 204 (Ind. 1985).

33-2.1-8-4. Compensation based on confidential information prohibited. — A justice, judge or prosecuting attorney may not accept any compensation from any employment, transaction or investment which was entered into or made as a result of material information of a confidential nature. [IC 33-2.1-8-4, as added by Acts 1975, P.L. 304, § 1.]

33-2.1-8-5. Excessive proceeds of sale, lease or service transaction prohibited. — A justice, judge or prosecuting attorney may not accept compensation for the sale or lease of any property or service which exceeds that which he would charge in the ordinary course of business from any person or entity whom he knows, or has reason to know, has an economic interest in the outcome of a current or future cause in which the justice, judge or prosecuting attorney is or may be a participant. [IC 33-2.1-8-5, as added by Acts 1975, P.L. 304, § 1.]

33-2.1-8-6. Filing of annual statement of economic interests. —

(a) The following shall file with the commission an annual statement of economic interests:

(1) Justices, judges, prosecuting attorneys, and the clerk of the supreme court.

(2) Except as provided in subsection (c), any candidate for one (1) of the offices listed in subdivision (1) who is not the holder of that office.

(b) Justices and judges who are candidates for retention in office are subject to IC 3-9.

(c) This section does not apply to a candidate for an appointment pro tempore to fill a vacancy in an office under IC 3-13. [IC 33-2.1-8-6, as added by Acts 1975, P.L. 304, § 1; P.L.3-1987, § 528; P.L.3-1997, § 444.]

33-2.1-8-7. Deadline for filing statement of economic interests. —

(a) The statement of economic interests must be filed with the commission:

(1) no later than February 1; and

(2) before filing:

(A) a declaration of candidacy, if required under IC 3-8-2 or IC 3-8-4-11;

(B) a petition of nomination under IC 3-8-6;

(C) a certificate of candidate selection under IC 3-13-1 or IC 3-13-2; or

(D) a declaration of intent to be a write-in candidate, if required under IC 3-8-2.

(b) In a county where judges are selected by a county commission on judicial qualifications, a candidate must file a statement with the county commission and also with the commission on judicial qualifications. [IC 33-2.1-8-7, as added by Acts 1975, P.L. 304, § 1; P.L.3-1987, § 529; P.L.5-1988, § 164; P.L.3-1995, § 149; P.L.3-1997, § 445.]

33-2.1-8-8. Contents of statement of economic interests. — The statement of economic interests shall set forth the following information for the preceding calendar year:

(1) The name and address of any person from whom the justice, judge, prosecuting attorney, or clerk of the supreme court received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The name of the employer of the justice, judge, prosecuting attorney, or clerk of the supreme court and the employer of that person's spouse.

(3) The nature of the employer's business.

(4) The name of any sole proprietorship owned or professional practice operated by the justice, judge, prosecuting attorney, clerk of the supreme court, or that person's spouse and the nature of the business.

(5) The name of any partnership of which the justice, judge, prosecuting attorney, clerk of the supreme court, or that person's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (except a church) of which the justice, judge, prosecuting attorney, clerk of the supreme court, or that person's

spouse is an officer or director and the nature of the corporation's business.

(7) The name of any corporation in which the justice, judge, prosecuting attorney, clerk of the supreme court, or that person's spouse or unemancipated children under eighteen (18) years of age own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). [IC 33-2.1-8-8, as added by Acts 1975, P.L. 304, § 1; 1981, P.L. 273, § 1; P.L.3-1987, § 530; P.L.279-1995, § 2; P.L.280-1995, § 1.]

Effective Dates. P.L.279-1995, § 24, declared an emergency and § 2 provided that the amendment take effect January 1, 1996.

P.L.280-1995, § 26, declared an emergency and § 1 provided that the amendment take effect January 1, 1998.

33-2.1-8-9. [Repealed.]

Compiler's Notes. This section, which prohibited bribery or conflicts of interests, and provided penalties, was repealed by Acts

1978, P.L. 2, § 3308. For present law, see IC 35-44-1-2, IC 35-44-1-3.

33-2.1-8-10. Unauthorized activities of supreme court justice or court of appeals judge. — A justice of the supreme court or judge of the court of appeals may not:

- (1) Engage in the practice of law;
- (2) Run for elected office other than a judicial office;
- (3) Directly or indirectly make any contribution to, or hold any office in, a political party or organization; or
- (4) Take part in any political campaign;

as provided in Article 7, Section 11 of the Constitution of the State of Indiana. [P.L.3-1987, § 531.]

CHAPTER 9

**DEFENSE OF JUDGES AND PROSECUTING ATTORNEYS
IN CIVIL ACTIONS**

SECTION.

33-2.1-9-1. Duties of attorney general.

33-2.1-9-2. Proceedings excepted.

33-2.1-9-3. Choice of counsel — Responsibility for civil damages.

SECTION.

ity for civil damages.

33-2.1-9-4. Employment of outside counsel.

33-2.1-9-1. Duties of attorney general. — (a) As used in this chapter, "judge" has the meaning set forth in IC 33-13-17-3.

(b) If a judge or prosecuting attorney is sued for civil damages or equitable relief and the suit would be construed, under notice pleading, as arising out of an act performed within the scope of the duties of the judge or prosecuting attorney, the attorney general shall:

- (1) Defend the judge or prosecuting attorney in the suit; or
- (2) Authorize the executive director of the division of state court administration to hire private counsel to provide the defense. [IC 33-2.1-9-1, as added by Acts 1976, P.L. 131, § 1; P.L.207-1991, § 1.]

33-2.1-9-2. Proceedings excepted. — Nothing in this chapter permits the appointment of counsel for the defense of a judge or prosecuting attorney in criminal or disciplinary proceedings. [IC 33-2.1-9-2, as added by Acts 1976, P.L. 131, § 1.]

33-2.1-9-3. Choice of counsel — Responsibility for civil damages.
— This chapter does not:

- (1) Deprive a judge or prosecuting attorney of his right to select defense counsel of his own choice at his own expense; or
- (2) Relieve a prosecuting attorney from responsibility for civil damages. [IC 33-2.1-9-3, as added by Acts 1976, P.L. 131, § 1; P.L.207-1991, § 2.]

33-2.1-9-4. Employment of outside counsel. — The attorney general may employ such legal and other professional services as shall be necessary to adequately and fully perform the duties required by this chapter. [IC 33-2.1-9-4, as added by Acts 1976, P.L. 131, § 1.]

CHAPTER 10

INDIANA CHILD SUPPORT ADVISORY COMMITTEE

SECTION.	SECTION.
33-2.1-10-1. Indiana child support advisory committee established — Members.	port guidelines — Recommendations concerning amendments to guidelines.
33-2.1-10-2. Term — Vacancy.	33-2.1-10-7. Annual report.
33-2.1-10-3. Chairman.	33-2.1-10-8. Distribution of report to supreme court members.
33-2.1-10-4. Salary — Traveling and other expenses.	33-2.1-10-9. Supreme court review of committee's report.
33-2.1-10-5. Meetings.	
33-2.1-10-6. Committee review of child sup-	

33-2.1-10-1. Indiana child support advisory committee established — Members. — (a) The Indiana child custody and support advisory committee is established. The committee consists of twelve (12) members as follows:

- (1) One (1) judge or magistrate whose jurisdiction and caseload includes domestic relations.
 - (2) One (1) attorney admitted to the practice of law in Indiana who conducts at least fifty percent (50%) of the attorney's practice in the area of domestic relations.
 - (3) Eight (8) members of the general assembly, with the members chosen from the standing committees which consider child custody and support matters.
 - (4) A custodial parent.
 - (5) A noncustodial parent.
- (b) The appointments under subsection (a)(3) must include the following:
- (1) Four (4) members from the senate, with not more than two (2) from the same political party and not more than two (2) of the same gender.

(2) Four (4) members from the house of representatives, with not more than two (2) from the same political party and not more than two (2) of the same gender.

(c) Appointments of the committee members shall be made as follows:

(1) The speaker of the house of representatives shall appoint the members under subsection (a)(1) and (a)(4) and the four (4) members from the house of representatives under subsection (a)(3).

(2) The president pro tempore of the senate shall appoint the members under subsection (a)(2) and (a)(5) and the four (4) members from the senate under subsection (a)(3).

(d) The members appointed under subsections (a)(1) and (a)(2) must be of opposite gender.

(e) The members appointed under subsections (a)(4) and (a)(5) must be of opposite gender. [P.L.208-1991, § 1; P.L.49-1993, § 9.]

Indiana Law Review. The Continuing Evolution of Indiana's Family Law of 1991, 25 Ind. L. Rev. 1243 (1992).

33-2.1-10-2. Term — Vacancy. — (a) An appointment under section 1 [IC 33-2.1-10-1] of this chapter is for a two (2) year term. A term begins August 1 of a year and an appointment required to be made that year shall be made before August 2.

(b) If a vacancy occurs, the vacancy shall be filled from the same group that was represented by the outgoing member. The new member serves for the remainder of the unexpired term. [P.L.208-1991, § 1.]

33-2.1-10-3. Chairman. — The chairman of the legislative council shall designate a member to serve as chairman of the committee. [P.L.208-1991, § 1.]

33-2.1-10-4. Salary — Traveling and other expenses. — (a) A member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) A member of the committee who is a state employee but is not a member of the general assembly is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) A member of the committee who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on an interim study committee established by the legislative council. [P.L.208-1991, § 1.]

33-2.1-10-5. Meetings. — The committee shall meet at the call of the chairman. The committee may meet any number of times during the year. However, the committee shall be compensated for not more than four (4) meetings per year. [P.L.208-1991, § 1.]

33-2.1-10-6. Committee review of child support guidelines — Recommendations concerning amendments to guidelines. — (a) The committee shall review the child support guidelines adopted by the supreme court. The committee shall make recommendations, if appropriate, concerning any amendments to the guidelines. In reviewing the guidelines and formulating recommendations, the committee shall consider all relevant matters, including but not limited to the following:

- (1) The mathematics pertaining to the child support guideline chart.
- (2) The actual costs of supporting a child.
- (3) Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than the financial needs of the child.
- (4) Equality of child support awards for the children of the parties, regardless of birth order.
- (5) A mechanism that may be employed to modify the amount of support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent.
- (6) The age of a child to the extent that the child may require different amounts of support at different ages.
- (7) Clarification regarding under what circumstances, if any, support may be abated.
- (8) A mechanism that may be employed to ensure that the guidelines are applied flexibly.
- (9) The application of the guidelines to a split custody situation.
- (10) Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed had the family remained intact.

(b) In addition to the duties set forth in subsection (a), the committee shall review custody and educational expenses and other items relating to the welfare of a child of a family that is no longer intact. [P.L.208-1991, § 1; P.L.49-1993, § 10.]

33-2.1-10-7. Annual report. — The committee shall submit a report to the supreme court administrator and to the legislative services agency not later than August 1 of each year. [P.L.208-1991, § 1; P.L.49-1993, § 11.]

33-2.1-10-8. Distribution of report to supreme court members. — The supreme court administrator shall distribute the report to the members of the supreme court. [P.L.208-1991, § 1.]

33-2.1-10-9. Supreme court review of committee's report. — The supreme court shall review the committee's report. The supreme court may amend the child support guidelines adopted by the supreme court based upon the committee's recommendations. [P.L.208-1991, § 1.]

CHAPTER 11

CIVIL LEGAL AID FUND

SECTION.

33-2.1-11-1. "Fund" defined.

33-2.1-11-2. "Indigent" defined.

33-2.1-11-3. "Legal services provider" defined.

33-2.1-11-4. Eligible legal services providers

SECTION.

— Opt-in form requirements

— Prohibited activities.

33-2.1-11-5. Civil legal aid fund.

33-2.1-11-6. Distribution — Formula.

33-2.1-11-7. Annual appropriation.

33-2.1-11-1. "Fund" defined. — As used in this chapter, "fund" refers to the civil legal aid fund established by section 5 [IC 33-2.1-11-5] of this chapter. [P.L.202-1997, § 2.]

33-2.1-11-2. "Indigent" defined. — As used in this chapter, "indigent" means an individual whose income is not more than one hundred twenty-five percent (125%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902. [P.L.202-1997, § 2.]

33-2.1-11-3. "Legal services provider" defined. — As used in this chapter, "legal services provider" means a private, nonprofit organization incorporated and operated exclusively in Indiana, the primary function and purpose of which is to provide civil legal services without charge to the indigent. [P.L.202-1997, § 2.]

33-2.1-11-4. Eligible legal services providers — Opt-in form requirements — Prohibited activities. — To be eligible for the receipt of funds under this chapter a legal services provider must meet the following requirements:

- (1) The legal services provider must have been:
 - (A) incorporated before July 2, 1997; or
 - (B) incorporated and providing civil legal aid to the indigent for three
 - (3) years immediately preceding the application for funds from the civil legal aid fund.
- (2) The legal services provider must submit an opt-in form to the state court administrator before May 2 of each year. The form must include the following information:
 - (A) The name, address, and telephone number of the legal services provider.
 - (B) The Internal Revenue Code 501(c)(3) form of the legal services provider.
 - (C) The name and address of the executive director and board president of the legal services provider.
 - (D) A list of all counties within the incorporated service area of the legal services provider.
 - (E) Certification that the legal services provider has provided legal services to indigent individuals within its service area for the

preceding three (3) years and that the legal services provider will continue to provide legal services to the indigent for the year following receipt of funds from the civil legal aid fund.

(3) The legal services provider may not do any of the following:

(A) Make available funds, personnel, or equipment for use in advocating or opposing a plan or proposal, represent a party, or participate in litigation that is intended to or has the effect of altering, revising, or reapportioning a legislative, a judicial, or an elective district at any level of government, including influencing the timing or manner of the taking of a census.

(B) Attempt to influence the issuance, amendment, or revocation of an executive order, regulation, or other statement of general applicability and future effect by a federal, state, or local agency.

(C) Attempt to influence an adjudicatory proceeding of a federal, state, or local agency if such part of the proceeding is designed for the formulation or modification of an agency policy of general applicability and future effect.

(D) Attempt to influence the passage or defeat of legislation, a constitutional amendment, a referendum, an initiative, or similar procedure of the Congress, a state, or a local legislative body.

(E) Attempt to influence the conduct of oversight proceedings of the Legal Services Corporation or a person or an entity receiving financial assistance provided by the Legal Services Corporation.

(F) Pay for a personal service, an advertisement, a telegram, a telephone communication, a letter, printed or written matter, an administrative expense, or a related expense, associated with an activity prohibited in this subdivision.

(G) Initiate or participate in a class action suit.

(H) Support or conduct a training program for the purpose of advocating a particular public policy or encouraging a political activity, a labor or an antilabor activity, a boycott, picketing, a strike, or a demonstration, including the dissemination of information about such a policy or activity. However, this clause may not be construed to prohibit the training of an attorney or a paralegal in the provision of:

(i) adequate legal assistance to eligible clients; or

(ii) advice to an eligible client as to the legal rights of the client.

(I) Participate in litigation:

(i) on behalf of a person incarcerated in a federal, state, or local prison; or

(ii) arising out of the incarceration of a person described in item (i).

[P.L.202-1997, § 2.]

33-2.1-11-5. Civil legal aid fund. — (a) The civil legal aid fund is established for the purpose of providing additional revenue for legal services providers.

(b) The fund is administered by the division of state court administration.
[P.L.202-1997, § 2.]

33-2.1-11-6. Distribution — Formula. — (a) The division of state court administration shall annually determine the amount to be distributed from the fund to each county's legal services provider under the following formula:

STEP ONE: Determine the number of civil cases filed in the county during the year as reported by the most recent Indiana Judicial Report.

STEP TWO: Determine the number of civil cases filed in Indiana during the year as reported by the most recent Indiana Judicial Report.

STEP THREE: Divide the amount determined in STEP ONE by the amount determined in STEP TWO.

STEP FOUR: Multiply the quotient determined in STEP THREE by the annual amount appropriated under section 7 [IC 33-2.1-11-7] of this chapter or by the annual amount of the appropriation from the state general fund as provided in the state budget act, whichever is greater.

Except as provided in subsection (b), the product determined in STEP FOUR is the amount to be distributed to the legal services provider or providers having the county in its service area.

(b) In a county where there is more than one (1) legal services provider, the amount distributed from the fund for that county shall be distributed among the legal services providers in direct proportion to the number of legal services providers in that county.

(c) Distributions from the fund shall be made on January 1 and July 1 of each year. Money in the fund is annually appropriated to carry out the purposes of the fund. [P.L.202-1997, § 2.]

33-2.1-11-7. Annual appropriation. — There is appropriated on June 30 and December 31 of each year five hundred thousand dollars (\$500,000) from the state general fund for deposit into the civil legal aid fund established under section 5 [IC 33-2.1-11-5] of this chapter. [P.L.202-1997, § 2.]

CHAPTER 12

INDIANA CONFERENCE FOR LEGAL EDUCATION OPPORTUNITY

SECTION.

33-2.1-12-1. "Program" defined.

33-2.1-12-2. Conference established — Purpose.

33-2.1-12-3. Organization and administration by chief justice — Advisory committee membership — Applications — Annual stipends.

SECTION.

33-2.1-12-4. Law school preparation course.

33-2.1-12-5. Financial assistance — Eligibility.

33-2.1-12-6. Program developed by courts.

33-2.1-12-7. Annual appropriation.

33-2.1-12-1. "Program" defined. — As used in this chapter, "program" refers to the Indiana conference for legal education opportunity established under section 2 [IC 33-2.1-12-2] of this chapter. [P.L.202-1997, § 3.]

Compiler's Notes. P.L.202-1997, § 8, effective July 1, 1997, provides: "There is appropriated from the state general fund to the

office of judicial administration, division of supreme court administration, two hundred fifty thousand dollars (\$250,000) for the pe-

riod beginning July 1, 1997, and ending June 30, 1998, and four hundred thousand dollars (\$400,000) for the period beginning July 1, 1998, and ending June 30, 1999, to be used for the Indiana conference for legal education opportunity established by IC 33-2.1-12, as added by this act.”

P.L.202-1997, § 9, effective May 13, 1997, provides:

“(a) The appropriations made by this act do

not supplement any appropriations made by HEA 1001-1997 or another law enacted in the 1997 session of the general assembly.

“(b) If appropriations are made by HEA 1001-1997 or another law enacted in the 1997 session of the general assembly, the amount of appropriation that is greater shall be appropriated as specified in this act.

“(c) This SECTION expires July 1, 1999.”

33-2.1-12-2. Conference established — Purpose. — The Indiana conference for legal education opportunity is established to assist Indiana minority, low income, or educationally disadvantaged college graduates in pursuing a law degree and a career in the Indiana legal and professional community. [P.L.202-1997, § 3.]

33-2.1-12-3. Organization and administration by chief justice — Advisory committee membership — Applications — Annual stipends. — (a) The program shall be organized and administered by the chief justice of the Indiana supreme court. The chief justice shall appoint an advisory committee composed of eight (8) members as follows:

(1) Two (2) practicing attorneys.

(2) Two (2) judges.

(3) Two (2) Indiana law school professors or administrators.

(4) Two (2) members representing community groups.

(b) The chief justice shall serve as chair of the advisory committee.

(c) Appointed members of the committee serve for three (3) year terms and may be reappointed. . .

(d) The committee shall solicit applications and select persons for the program who:

(1) have earned a bachelor’s degree;

(2) have applied to an Indiana law school;

(3) have demonstrated the interest, motivation, and capacity to earn a law degree; and

(4) would benefit from the special training offered by the program.

(e) The committee shall award annual stipends to certified graduates of the program. [P.L.202-1997, § 3.]

33-2.1-12-4. Law school preparation course. — (a) The program must provide for an intensive course of study to prepare the students selected for the demands of a law school education through classroom discussion and instruction in legal research, writing, and analysis.

(b) The program shall be taught by law professors and others from the legal profession and shall be held at an Indiana law school during the summer months. [P.L.202-1997, § 3.]

33-2.1-12-5. Financial assistance — Eligibility. — (a) The program must provide financial assistance in the form of an annual living expense stipend for those students who successfully complete the course of study and become certified graduates of the program.

(b) To be eligible for the annual stipend, certified graduates must be admitted to an Indiana law school, enroll on a full-time basis, and maintain good academic standing.

(c) The stipend may be awarded for up to three (3) successive academic years, if the student remains eligible. [P.L.202-1997, § 3.]

33-2.1-12-6. Program developed by courts. — The courts of the state are encouraged and requested to develop programs and opportunities to further the purposes of the program. [P.L.202-1997, § 3.]

33-2.1-12-7. Annual appropriation. — Beginning July 1, 1999, and every year thereafter, there is appropriated from the state general fund to the office of judicial administration, division of state court administration, five hundred fifty thousand dollars (\$550,000), to be used for the Indiana conference for legal education opportunity established by this chapter. [P.L.202-1997, § 3.]

ARTICLE 3

APPELLATE MATTERS

CHAPTER.

1. COURT OF APPEALS — MISCELLANEOUS PROVISIONS, 33-3-1-1 — 33-3-1-11.
2. MISCELLANEOUS PROVISIONS, 33-3-2-1 — 33-3-2-17.

CHAPTER.

- 3, 4. [REPEALED.]
5. TAX COURT, 33-3-5-1 — 33-3-5-20.

CHAPTER 1

COURT OF APPEALS — MISCELLANEOUS PROVISIONS

SECTION.

- 33-3-1-1, 33-3-1-2. [Repealed.]
- 33-3-1-3. Clerk and sheriff.
- 33-3-1-4. Seal.
- 33-3-1-5. Process — Service — Fees.
- 33-3-1-6. Rooms — Furnishing — Law library.

SECTION.

- 33-3-1-7. [Repealed.]
- 33-3-1-8. Judges holding other courts.
- 33-3-1-9. Judges of kin — Counsel in cause.
- 33-3-1-10. Hearing and argument.
- 33-3-1-11. [Repealed.]

33-3-1-1, 33-3-1-2. [Repealed.]

Compiler's Notes. These sections, concerning the establishment of the Appellate

Court and the qualifications of judges, were repealed by Acts 1971, P.L. 427, § 8.

33-3-1-3. Clerk and sheriff. — The clerk and sheriff of the supreme court shall be clerk and sheriff respectively of the court of appeals. [Acts 1891, ch. 37, § 6, p. 39; P.L.3-1989, § 188.]

Cross References. Clerk of Supreme Court, IC 33-15-1-1 — IC 33-15-1-7, IC 33-15-4-1.

Sheriff of Supreme Court, IC 33-15-7-1 — IC 33-15-7-9.

NOTES TO DECISIONS

Custody of Records.

Since the records of the Appellate Court are in the custody of the clerk of the Supreme Court, it is not necessary to resort to the writ

of certiorari or any other formal procedure for the Supreme Court to get access to such records. *Warren v. Indiana Tel. Co.*, 217 Ind. 93, 26 N.E.2d 399 (1940).

33-3-1-4. Seal. — Said court shall have a seal, to be provided by the secretary of state, at the expense of the state, having such device as the secretary shall determine, and, on the face thereof, the title of the court. [Acts 1891, ch. 37, § 7, p. 39.]

33-3-1-5. Process — Service — Fees. — All process, rules and orders of said court shall be executed and served by the sheriff of the county to which the same shall be directed, and said sheriff shall be entitled to the fees allowed by law at the time for like service of process, rules or orders issuing from the Supreme Court. [Acts 1891, ch. 37, § 9, p. 39.]

Cited: *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993).

33-3-1-6. Rooms — Furnishing — Law library. — The custodian of public buildings and property shall provide rooms for the use of said judges and said court in Indianapolis, and said court shall have power to provide the necessary furniture for the same and stationery and things proper for the transaction of its business, at the expense of the state, and to make allowances therefor, to be audited and paid out of the state treasury upon presentation of the order of allowance, and shall have access to and use of the law library of the Supreme Court equally with the judges of the Supreme Court. [Acts 1891, ch. 37, § 11, p. 39.]

33-3-1-7. [Repealed.]

Compiler's Notes. This section, concerning rehearings, was repealed by Acts 1978,

P.L. 137, § 6. For present provisions, see Rule AP. 11(A) and IC 33-3-2-15.

33-3-1-8. Judges holding other courts. — The judges of the court of appeals shall be competent to sit as judges of the circuit, superior, and criminal courts. [Acts 1891, ch. 37, § 17, p. 39; P.L.3-1989, § 189.]

33-3-1-9. Judges of kin — Counsel in cause. — If any judge shall be kin to a party, or interested in a cause, or shall have been counsel therein, or the judge who rendered the decision below, he shall disqualify himself and not sit therein. [Acts 1891, ch. 37, § 21, p. 39; 1978, P.L. 137, § 5.]

Cross References. Transfers to Supreme Court, Rule AP. 11(B).

Cited: *Graver Tank & Mfg. Co. v. Maher*, 238 Ind. 226, 150 N.E.2d 254 (1958).

NOTES TO DECISIONS

ANALYSIS

Entire court.
Jurisdiction not lost.

Entire Court.

A decision concurred in by four judges of the Appellate Court sitting en banc with four judges not participating is valid. *Jose v.*

Brown, 140 Ind. App. 586, 224 N.E.2d 693, 10 Ind. Dec. 247 (1967).

Jurisdiction Not Lost.

The fact that a judge of the court has been counsel in the cause will not deprive the court of jurisdiction. *Hammond v. New York, C. & St. L.R.R.*, 126 Ind. 597, 27 N.E. 130 (1891).

Collateral References. Prior representation or activity as attorney as disqualifying judge. 72 A.L.R.2d 443; 16 A.L.R.4th 550.

Relationship of judge to one who is party in

an official or representative capacity as disqualification. 10 A.L.R.2d 1307.

Relationship to attorney as disqualifying judge. 50 A.L.R.2d 143.

33-3-1-10. Hearing and argument. — The hearing and argument of causes in the court shall be in accordance with the rules of the supreme court as to hearing and argument, or in accordance with such rules as the court of appeals may adopt. [Acts 1891, ch. 37, § 22, p. 39; P.L.3-1989, § 190.]

Cross References. Oral argument, Rule AP. 10.

33-3-1-11. [Repealed.]

Compiler's Notes. This section, concerning the publication of opinions of the court of appeals, was repealed by P.L.4-1983, § 20,

effective January 15, 1985. For present provisions, see IC 33-2.1-3-2.

CHAPTER 2

MISCELLANEOUS PROVISIONS

SECTION.

33-3-2-1 — 33-3-2-3. [Repealed.]

33-3-2-4. Appeals in civil cases.

33-3-2-5 — 33-3-2-14. [Repealed.]

SECTION.

33-3-2-15. Decisions in writing — Rehearing.

33-3-2-16, 33-3-2-17. [Repealed.]

33-3-2-1 — 33-3-2-3. [Repealed.]

Compiler's Notes. These sections, relating to the number and residential districts of

the judges, were repealed by Acts 1971, P.L. 427, § 8.

33-3-2-4. Appeals in civil cases. — No appeal shall be taken to the Supreme Court or Court of Appeals in any civil case where the amount in the controversy, exclusive of interest and costs, does not exceed fifty dollars (\$50) except as provided in IC 34-56-1. [Acts 1901, ch. 247, § 6, p. 565; 1903, ch. 156, § 1, p. 280; 1981, P.L. 272, § 17; P.L.1-1998, § 172.]

Cited: *Biedinger v. City of E. Chicago*, 129 Ind. App. 42, 154 N.E.2d 58 (1958).

NOTES TO DECISIONS

ANALYSIS

In general.
 Determination of amount in controversy.
 Dismissal at court's instance.
 Foreclosure of liens.
 Supremacy of Supreme Court.
 Transfer to Supreme Court.

In General.

Prior to the amendment of this section, appeals would not lie in actions within the jurisdiction of justices of the peace, unless the actions fell within an exception named in § 4-213 (since repealed). *Shaul v. Citizens State Bank*, 157 Ind. 281, 61 N.E. 559 (1901); *Lake Erie & W.R.R. v. Watkins*, 157 Ind. 600, 62 N.E. 443 (1902); *Baltimore & O.S.W.R.R. v. Harmon*, 161 Ind. 358, 68 N.E. 589 (1903); *Knowlton v. Smith*, 163 Ind. 294, 71 N.E. 895 (1904); *Fitch v. Long*, 29 Ind. App. 463, 64 N.E. 622 (1902); *Everett Piano Co. v. Bash*, 31 Ind. App. 498, 68 N.E. 329 (1903).

Under the provisions of this section, when the amount in controversy does not exceed \$50.00 and the validity of a franchise or ordinance, or the constitutionality of a statute, state or federal, or the proper construction of a statute, or rights guaranteed by the state or federal constitution, are not involved, an appeal cannot be taken to the Supreme or Appellate Court. *Sears v. Carpenter*, 164 Ind. 584, 74 N.E. 244 (1905); *Chicago & E.R.R. v. Ebersole*, 173 Ind. 332, 90 N.E. 608 (1910); *Chicago, T.H. & S.E. Ry. v. Anderson*, 182 Ind. 140, 105 N.E. 49, 1917A Ann. Cas. 182 (1914); *Pittsburgh, C., C. & St. L.R.R. v. Sneath Glass Co.*, 183 Ind. 138, 107 N.E. 72 (1914); *Ross v. Gallogly*, 187 Ind. 579, 120 N.E. 599 (1918); *Seibert v. City of Evansville*, 195 Ind. 189, 144 N.E. 841 (1924); *Yakey v. Leich*, 37 Ind. App. 393, 76 N.E. 926 (1906); *Washington Tp. v. Ratts*, 54 Ind. App. 229, 101 N.E. 842 (1913); *Schultz v. Alter*, 60 Ind. App. 245, 110 N.E. 230 (1915); *Mantle Lamp Co. v. Bonich*, 60 Ind. App. 275, 110 N.E. 558 (1915); *Greer v. Lake*, 63 Ind. App. 470, 114 N.E. 699 (1917); *Essington v. Bowman*, 69 Ind. App. 184, 121 N.E. 548 (1919); *Jerzakowski v. City of S. Bend*, 82 Ind. App. 132, 145 N.E. 520 (1924).

In an action to collect a road tax under a town ordinance where the facts pleaded show a violation of the ordinance and the court, in sustaining a demurrer to the complaint, decided that the town had no right of action, the question of the validity of the ordinance arises, and the Supreme Court has jurisdiction for the purpose of reviewing that question; but since the action originated before a justice of the peace, and the amount in controversy does not exceed \$50.00, other questions arising upon a paragraph of complaint

not based on the ordinance will not be considered. *Town of Newburgh v. House*, 191 Ind. 609, 134 N.E. 292 (1922).

The Supreme Court must be the judge of its constitutional jurisdiction. *Warren v. Indiana Tel. Co.*, 217 Ind. 93, 26 N.E.2d 399 (1940).

Under this section, no appeal may be taken from an award of the industrial board under the Workmen's Compensation Act not exceeding \$50.00. *Essington v. Bowman*, 69 Ind. App. 184, 121 N.E. 548 (1919).

In an action by a city to recover a penalty for violation of an ordinance, in which the city recovered a judgment, the right of the Supreme Court to assume jurisdiction, on appeal by the defendant, is barred by this section, although imprisonment might follow as a means of coercing payment of the judgment if the penalty is under the amount prescribed by such section. *Jerzakowski v. City of S. Bend*, 82 Ind. App. 132, 145 N.E. 520 (1924).

Where the amount in controversy on appeal, exclusive of interest and costs, does not exceed \$50.00, the Appellate Court has no jurisdiction of the appeal, if the case does not come within any of the exceptions found in this section or § 4-213 (since repealed). *Catherwood v. McIntyre*, 99 Ind. App. 220, 192 N.E. 109 (1934); *Franklin Sec. Co. v. Bushong*, 104 Ind. App. 565, 12 N.E.2d 371 (1938); *Gary R.R. v. Cinkoski*, 111 Ind. App. 458, 41 N.E.2d 660 (1942).

Determination of Amount in Controversy.

When the defendant appealed, in the absence of a set-off or counterclaim, the judgment, or the amount by which he may discharge himself, and not the amount of the plaintiff's claim, determined the amount in controversy. *Painter v. Guirl*, 71 Ind. 240 (1880); *Sprinkle v. Toney*, 73 Ind. 592 (1880); *Pennsylvania Co. v. Trimble*, 75 Ind. 378 (1881); *Louisville, N.A. & C.R.R. v. Coyle*, 85 Ind. 516 (1882); *Cincinnati, I., St. L. & C.R.R. v. McDade*, 111 Ind. 23, 12 N.E. 135 (1887); *Ex parte Sweeney*, 126 Ind. 583, 27 N.E. 127 (1891).

Interest or costs were not added in determining amount in controversy. *Cincinnati, I., St. L. & C.R.R. v. Grames*, 135 Ind. 44, 33 N.E. 896 (1893); *Kahl v. Madison Brewing Co.*, 14 Ind. App. 78, 42 N.E. 492 (1895).

Where the amount in controversy on appeal was less than the statutory requirement conferring jurisdiction, the appeal could not stand. *Pickett v. Hollingsworth*, 6 Ind. App. 436, 33 N.E. 911 (1893); *Kahl v. Madison Brewing Co.*, 14 Ind. App. 78, 42 N.E. 492 (1895); *Smith v. Barber*, 21 Ind. App. 636, 47 N.E. 346 (1897).

Ordinarily the amount claimed by the

Determination of Amount in**Controversy.** (Cont'd)

plaintiff determines the appellate jurisdiction where the defendant prevails in the trial court and the plaintiff appeals. *Schultz v. Alter*, 60 Ind. App. 245, 110 N.E. 230 (1915); *Mantle Lamp Co. v. Bonich*, 60 Ind. App. 275, 110 N.E. 558 (1915).

Under this section, fixing the Appellate Court's jurisdiction to amounts in controversy exceeding \$50.00, the Appellate Court's jurisdiction must be determined from the entire record and from the material facts of the pleadings, and not from the formal demand for judgment. *Franklin Sec. Co. v. Bushong*, 104 Ind. App. 565, 12 N.E.2d 371 (1938).

Dismissal at Court's Instance.

Although the appellee does not raise the question, the court must take notice of its lack of jurisdiction, and dismiss the appeal. *Yahey v. Leich*, 37 Ind. App. 393, 76 N.E. 926 (1907); *Schultz v. Alter*, 60 Ind. App. 245, 110 N.E. 230 (1915); *Essington v. Bowman*, 69 Ind. App. 184, 121 N.E. 548 (1919); *Jerzakowski v. City of S. Bend*, 82 Ind. App. 132, 145 N.E. 520 (1924); *Luten v. Illsley*, 86 Ind. App. 619, 158 N.E. 925 (1927).

Foreclosure of Liens.

The section has been construed by the Supreme Court to apply only to cases wherein the essential or primary object is to recover a money judgment and not actions to recover specific property or to foreclose a lien. *Hall v. Durham*, 113 Ind. 327, 15 N.E. 529 (1888); *Smith v. American Crystal Monument Co.*, 160 Ind. 141, 65 N.E. 524 (1902).

It follows that in an action to foreclose a lien, an appeal may be taken even when the amount involved does not exceed \$50.00.

Collateral References. Counterclaim or the like as affecting appellate jurisdictional amount. 58 A.L.R.2d 84.

Jurisdictional amount for appellate review as affected by payment, tender, settlement, or deposit in court. 58 A.L.R.2d 166.

Knowlton v. Smith, 163 Ind. 294, 71 N.E. 895 (1904); *Strebin v. Myers*, 42 Ind. App. 381, 85 N.E. 784 (1908).

Supremacy of Supreme Court.

While the legislature may not entirely deprive the Supreme Court of its appellate jurisdiction, it may contract the same as public policy may demand or require, and may, within reasonable limits, prescribe the class of cases in which appeals can be taken and from what courts or tribunals they may be prosecuted. *Pittsburgh, C., C. & St. L.R.R. v. Hoffman*, 200 Ind. 178, 162 N.E. 403 (1928). See also, *In re Petitions to Transf. Appeals*, 202 Ind. 365, 174 N.E. 812 (1931).

The legislature must give due regard to the supremacy of the Supreme Court, and it cannot vest in any other tribunal final jurisdiction of questions which require the highest expression of judicial judgment. *In re Petitions to Transf. Appeals*, 202 Ind. 365, 174 N.E. 812 (1931).

The right of appeal is not wholly statutory as the Supreme Court has constitutional appellate jurisdiction of which it cannot be deprived by the legislature through action or inaction. *Arnholt v. Columbus*, 127 Ind. App. 116, 138 N.E.2d 906 (1956).

Transfer to Supreme Court.

The Appellate Court created by statute had only such jurisdiction as was conferred by statute and where such court had no jurisdiction over appeal in a civil case involving nothing but the right of a city to annex certain out-lots and jurisdiction over such appeal rested in the Supreme Court, the case would be transferred to the Supreme Court. *Arnholt v. Columbus*, 127 Ind. App. 116, 138 N.E.2d 906 (1956).

Jurisdictional amount for appellate review as affected by plaintiff's abandonment of claim, wholly or in part, or by discontinuance, dismissal, remittitur, retraxit, or stipulation. 58 A.L.R.2d 177.

33-3-2-5 — 33-3-2-14. [Repealed.]

Compiler's Notes. These sections, concerning appeals to be taken to the Supreme and Appellate Courts, assignment of cases, transfer of cases, and election of judges of the Appellate Court, were repealed by Acts 1971,

P.L. 427, § 8 and Acts 1978, P.L. 136, §§ 6, 11(B), and 15(M). For present provisions, see Ind. Const., art. 7, §§ 4-6, IC 33-2.1-3-1 and Rules AP. 4, 11(B), and 15(M).

33-3-2-15. Decisions in writing — Rehearing. — In every case reversed by a division of the Court of Appeals, an opinion shall be given on the material questions therein in writing, and the appropriate judgment shall

be entered, with directions to the lower court. In all cases, the opinion and judgment shall be certified to the lower court at the expiration of thirty (30) days from the time allowed by law for the filing of a petition for a rehearing, unless sooner ordered by such division, or unless a petition for a rehearing be filed, or the cause transferred or appealed to the Supreme Court. If a cause be transferred or appealed to the Supreme Court, or a rehearing be granted, the judgment of the division of the Court of Appeals is thereby vacated. If a rehearing be denied, the opinion and judgment shall, after the expiration of thirty (30) days from the date of such ruling, be certified to the lower court, unless the case be transferred or appealed to the Supreme Court. If the losing party files a waiver of his right to file a petition for a rehearing, the opinion shall be at once certified to the lower court. [Acts 1901, ch. 247, § 17, p. 565; 1981, P.L. 272, § 18.]

Cross References. Judicial opinion or decision of Supreme Court or Court of Appeals must be in writing, IC 33-2.1-3-2.

Cited: *Naked City, Inc. v. State*, 434 N.E.2d 576 (Ind. App. 1982).

NOTES TO DECISIONS

ANALYSIS

In general.

Affirmed cases.

In General.

The Appellate Court's judgment of affirmance without written opinion certified to the lower court must remain the law of such case after expiration of the time for attacking it, notwithstanding the requirements for written opinion. *Hunter v. Cleveland, C., C. & St. L.R.R.*, 202 Ind. 328, 174 N.E. 287 (1930).

The Appellate Court, on decision of a case, is required to give a statement in writing on questions arising in the record. *Hunter v. Cleveland, C., C. & St. L.R.R.*, 202 Ind. 328, 174 N.E. 287 (1930); *Myers v. Newcomer*, 202 Ind. 335, 174 N.E. 290 (1930); *Sluss v. Thermoid Rubber Co.*, 202 Ind. 338, 174 N.E. 291 (1930); *Burkus v. State*, 202 Ind. 341, 174 N.E. 292 (1931).

Affirmed Cases.

The decision in *Hunter v. Cleveland, C., C. & St. L.R.R.*, 202 Ind. 328, 174 N.E. 287 (1930), requiring that "a statement in writing of each question arising in the record of such case and the decision of the court thereon" in all cases, overrules the following cases as to the point that written opinions were required only in case of reversal: *Craig v. Bennett*, 158 Ind. 9, 62 N.E. 273 (1901); *Woods v. Indiana Mut. Bldg. & Loan Ass'n*, 28 Ind. App. 359, 61 N.E. 1139, 62 N.E. 454 (1901); *Cleveland, C., C. & St. L.R.R. v. Van Natta*, 44 Ind. App. 608, 87 N.E. 999 (1909); *Roetzel v. State ex rel. Stevenson*, 96 Ind. App. 661, 171 N.E. 206 (1930).

The fact that the Appellate Court, in affirming a case, omits from its written opinion a discussion of an assignment of error which has no controlling influence, does not constitute error. *Roetzel v. State ex rel. Stevenson*, 96 Ind. App. 661, 171 N.E. 206 (1930).

33-3-2-16, 33-3-2-17. [Repealed.]

Compiler's Notes. These sections, concerning docket fees and effect of the act on the continuation of the former Appellate Court of

Indiana, were repealed by Acts 1978, P.L. 137, § 6 and P.L.286-1989, § 4.

CHAPTER 3

DISTRIBUTION OF CASES

33-3-3-1. [Repealed.]

Compiler's Notes. This chapter, concerning the docketing of appeals, was repealed by

Acts 1978, P.L. 137, § 6. For present law, see IC 33-2.1-2-2.

CHAPTER 4

TRANSFER OF CASES TO SUPREME COURT BECAUSE OF
DISPARITY IN NUMBER PENDING**33-3-4-1. [Repealed.]**

Compiler's Notes. This chapter, concerning the transfer of cases to the Supreme

Court, was repealed by Acts 1978, P.L. 137. For present provisions, see Rule AP. 4(D).

CHAPTER 5

TAX COURT

SECTION.

- 33-3-5-1. Establishment — Court of record.
- 33-3-5-2. Jurisdiction — Evidentiary hearings.
- 33-3-5-3. Judge.
- 33-3-5-4. Prerequisites to being judge.
- 33-3-5-5. Term of office.
- 33-3-5-6. Vacancies.
- 33-3-5-7. Salary — Traveling expenses and subsistence allowance — Full-time position — Automobile furnished.
- 33-3-5-8. Judge pro tempore.
- 33-3-5-9. Principal office — Facilities.
- 33-3-5-10. Employment of personnel — Clerk of court.
- 33-3-5-11. Original tax appeal — Procedure.
- 33-3-5-12. Small claims docket — Procedures

SECTION.

- [effective until March 1, 2001].
- 33-3-5-12. Small claims docket — Procedures [effective March 1, 2001].
- 33-3-5-13. Trial without jury — Rules and procedures.
- 33-3-5-14. Administrative hearings or proceedings.
- 33-3-5-15. Written decisions — Remand to state board of tax commissioners — Appeals.
- 33-3-5-16. Fees.
- 33-3-5-17. Witnesses — Fee and mileage.
- 33-3-5-18. Transcripts — Fee.
- 33-3-5-19. Collection of fees.
- 33-3-5-20. Refund of prevailing taxpayer's filing fee.

33-3-5-1. Establishment — Court of record. — The Indiana tax court is established. The tax court is a court of record. [P.L.291-1985, § 1; P.L.3-1989, § 191.]

Indiana Law Review. Some Very Significant Developments in Indiana Taxation, 20 Ind. L. Rev. 361 (1987).

33-3-5-2. Jurisdiction — Evidentiary hearings. — (a) The tax court is a court of limited jurisdiction. The tax court has exclusive jurisdiction over any case that arises under the tax laws of this state and that is an initial appeal of a final determination made by:

- (1) The department of state revenue with respect to a listed tax (as defined in IC 6-8.1-1-1); or
- (2) The state board of tax commissioners.

(b) The tax court also has any other jurisdiction conferred by statute.

(c) The cases over which the tax court has exclusive original jurisdiction are referred to as original tax appeals in this chapter. The tax court does not have jurisdiction over a case unless:

- (1) The case is an original tax appeal; or
- (2) The tax court has otherwise been specifically assigned jurisdiction by statute.

(d) A taxpayer that appeals to the tax court shall, at the time the appeal is filed, elect to have all evidentiary hearings in the appeal conducted in one (1) of the following counties:

- (1) Allen County.
- (2) Jefferson County.
- (3) Lake County.
- (4) Marion County.
- (5) St. Joseph County.
- (6) Vanderburgh County.
- (7) Vigo County.

(e) A taxpayer that is an appellee in an appeal to the tax court shall, within thirty (30) days after it receives notice of the appeal, elect to have all evidentiary hearings in the appeal conducted in a county listed in subsection (d).

(f) The tax court does not have jurisdiction over a case that is an appeal from a final determination made by the department of state revenue under IC 4-32 other than a final determination concerning the gaming card excise tax established under IC 4-32-15. [P.L.291-1985, § 1; P.L.59-1990, § 4; P.L.24-1992, § 59.]

Indiana Law Review. Developments in Indiana Tax Law: Further Refinements of the Indiana Tax Court's Jurisdiction, and the Attack on Indiana's Property Tax System, 24 Ind. L. Rev. 1125 (1991).

1993 Developments in Indiana Taxation, 27 Ind. L. Rev. 1311 (1994).

Cited: American Juice Co. v. State Bd. of Tax Comm'rs, 527 N.E.2d 1169 (Ind. Tax 1988); Auburn Found., Inc. v. State Bd. of Tax Comm'rs, 628 N.E.2d 1260 (Ind. Tax 1994).

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—Final determination.

—Subject matter jurisdiction.

Arises under.

Compulsory jurisdiction.

De novo hearing.

Exclusive jurisdiction.

Open door law claims.

Tax cases.

Appeals.

—Final Determination.

Since the jurisdiction provisions of IC 6-4.1-7-5 and this section are repugnant, this section, as the later statute, operates to the extent of the repugnancy of the older statute. Thus, this section controls when the appeal is from a final determination of the department of state revenue. *Blood v. Poindexter*, 524 N.E.2d 824 (Ind. Tax 1988).

A department of state revenue "Order Determining Value of Estate and Amount of Tax, Etc." was a final determination and therefore appealable. *Blood v. Poindexter*, 524 N.E.2d 824 (Ind. Tax 1988).

Given the state board's obligation to review assessments to ensure compliance with Article 10, § 1 of the Indiana Constitution and the court's construction of its own jurisdictional mandate, the state board's failure to review petition alleging errors in a reassessment constituted a final determination within the meaning of subsection (a) of this section. The court therefore had subject matter jurisdiction over the landowners' appeal. *Bielski v. Zorn*, 627 N.E.2d 880 (Ind. Tax. 1994).

—Subject Matter Jurisdiction.

Tax court has subject matter jurisdiction over an appeal by a township assessor from a dismissal by the state board of tax commissioners of the assessor's petition for review of assessment. *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E.2d 135 (Ind. Tax 1995).

Arises Under.

The "arises under" language in subsection (a) confers a broad jurisdictional grant consistent with its federal constitutional and statutory analogues, its practice, and the Indiana Rules of Procedure. *Harlan Sprague Dawley, Inc. v. Indiana Dep't of State Revenue*, 583 N.E.2d 214 (Ind. Tax 1991).

Compulsory Jurisdiction.

The Tax Court's exercise of its exclusive jurisdiction over a taxpayer's federal civil rights claim was compulsory, and its compulsory exercise of concurrent jurisdiction was not barred by the federal Tax Injunction Act's standard, the doctrine of equitable restraint, or the presence of an exclusive state remedy. *Harlan Sprague Dawley, Inc. v. Indiana Dep't of State Revenue*, 583 N.E.2d 214 (Ind. Tax 1991).

De Novo Hearing.

The tax court may hear the case de novo. It may hear all admissible evidence presented to it for the first time in the judicial proceeding. This type of review affords due process. *Blood v. Poindexter*, 524 N.E.2d 824 (Ind. Tax 1988).

Exclusive Jurisdiction.

Taxpayers must invoke administrative remedies to bring challenges to the constitutionality of a tax administered by the department of state revenue, and once those remedies have been pursued judicial review may be sought only in the tax court and not courts of general jurisdiction. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).

Plaintiff's claim that 1995 amendment to IC 6-1.1-12-28.5, which eliminated his resource recovery systems deduction, was unconstitutional arose under state tax laws, and his action to enjoin elimination of his deduction should have been brought in tax court, and after administrative review process had begun. *Winski Bros. v. Bayh*, 679 N.E.2d 912 (Ind. App. 1997).

Open Door Law Claims.

Because the State Board of Tax Commis-

sioners was wholly without authority under IC 5-14-1.5-7 to enter a final determination over an Open Door Law claim, the court had nothing to review within the context of plaintiff's original tax appeal, and the court dismissed plaintiff's Open Door Law claim. *Miller v. Gibson County Solid Waste Mgt. Dist.*, 622 N.E.2d 248 (Ind. Tax 1993).

Tax Cases.

An appeal from the state board's final determination, entered under IC 6-1.1-20-6, approving the district's proposed bond issue, was an Indiana tax law within the meaning of subsection (a) of this section, and where it was also beyond dispute that the case was an initial appeal of a final determination of the state board, the State Board of Tax Commissioners issued its amended order, and plaintiff filed its appeal, the case fell within the jurisdictional mandate of this section. *Miller v. Gibson County Solid Waste Mgt. Dist.*, 622 N.E.2d 248 (Ind. Tax 1993).

The legislature intended that all challenges to the tax laws be tried in the tax court and a case arises under the tax laws if an Indiana tax statute creates the right of action, or the case principally involves collection or defenses to that collection. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).

Trial court did not have subject matter jurisdiction to determine class action suit filed by consumer who asserted sales tax was improperly collected by retailer for delivery charges; consumer was required to file for a tax refund with the department of revenue. *Zayas v. Gregg Appliances, Inc.*, 676 N.E.2d 365 (Ind. App. 1997).

33-3-5-3. Judge. — The tax court consists of one (1) judge. [P.L.291-1985, § 1.]

33-3-5-4. Prerequisites to being judge. — The judge of the tax court must:

- (1) Be a citizen of Indiana; and
- (2) Have been admitted to the practice of law in Indiana for a period of at least five (5) years. [P.L.291-1985, § 1.]

33-3-5-5. Term of office. — (a) The initial term of office of a person appointed to serve as the judge of the tax court begins on the effective date of that appointment and ends on the date of the next general election that follows the expiration of two (2) years from the effective date of that appointment.

(b) The tax court judge may be approved or rejected for an additional term or terms in the same manner as are the justices of the supreme court under IC 33-2.1-2. [P.L.291-1985, § 1; P.L.185-1986, § 1.]

33-3-5-6. Vacancies. — (a) Except as otherwise provided in this section, a vacancy on the tax court shall be filled as provided in IC 33-2.1-4.

(b) Before the expiration of the sixty (60) day period prescribed by IC 33-2.1-4-10, the governor shall:

(1) Appoint to the tax court one (1) of the three (3) persons initially nominated by the judicial nominating commission; or

(2) Reject all the persons initially nominated by the commission.

If the governor does reject all the nominees, the governor shall notify the chairman of the judicial nominating commission of that action. The commission shall then submit the nominations of three (3) new candidates to the governor not later than forty (40) days after receipt of the notice. The governor shall fill the vacancy on the tax court by appointing one (1) of the new candidates within sixty (60) days from the date the names of the new candidates are submitted by the commission. [P.L.291-1985, § 1; P.L.185-1986, § 2.]

33-3-5-7. Salary — Traveling expenses and subsistence allowance — Full-time position — Automobile furnished. — (a) The judge of the tax court is entitled to an annual salary equal to the annual salary provided in IC 33-13-12-9 to a judge of the court of appeals. In addition, the judge of the tax court is entitled to the following:

(1) Reimbursement for traveling expenses and other expenses actually incurred in connection with the judge's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(2) A subsistence allowance equal to the amount provided under IC 33-13-12-9 to a judge of the court of appeals who is not the chief judge of the court of appeals.

(b) The judge of the tax court:

(1) Shall devote full time to judicial duties; and

(2) May not engage in the practice of law.

(c) The state shall pay the annual salary prescribed in subsection (a) from the state general fund.

(d) The state shall furnish an automobile to the judge of the state tax court. [P.L.291-1985, § 1; P.L.378-1987(ss), § 2; P.L.159-1990, § 1.]

Effective Dates. P.L.159-1990, § 3. January 1, 1991.

33-3-5-8. Judge pro tempore. — If the judge of the tax court is disqualified from hearing a case or is incapable of exercising judicial duties with respect to the case, the chief justice of the supreme court shall appoint a judge pro tempore to sit in place of the disqualified or absent judge. [P.L.291-1985, § 1.]

33-3-5-9. Principal office — Facilities. — The tax court shall maintain its principal office in Indianapolis. The department of administration shall provide suitable facilities for the court in Indianapolis. If the court hears a case at a location outside Marion County, the executive of the county in

which the court sits shall provide the court with suitable facilities. [P.L.291-1985, § 1.]

33-3-5-10. Employment of personnel — Clerk of court. — The tax court may employ a bailiff, clerk, reporter, clerical assistant, or any other personnel that the court needs to perform its duties. The clerk of the supreme court shall serve as the clerk of the tax court. [P.L.291-1985, § 1; P.L.3-1989, § 192.]

33-3-5-11. Original tax appeal — Procedure. — (a) A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the state board of tax commissioners. If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.

(b) A taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court to enjoin the collection of the tax. The petition must set forth a summary of:

- (1) The issues that the petitioner will raise in the original tax appeal; and
- (2) The equitable considerations for which the tax court should order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

- (1) The issues raised by the original tax appeal are substantial;
- (2) The petitioner has a reasonable opportunity to prevail in the original tax appeal; and
- (3) The equitable considerations favoring the enjoining of the collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.

(d) This section does not apply to a final determination of the department of state revenue under IC 4-32 other than a final determination concerning the gaming card excise tax established under IC 4-32-15. [P.L.291-1985, § 1; P.L.24-1992, § 60.]

Indiana Law Review. Developments in Indiana Tax Law: Further Refinements of the Indiana Tax Court's Jurisdiction, and the Attack on Indiana's Property Tax System, 24 Ind. L. Rev. 1125 (1991).

1993 Developments in Indiana Taxation, 27 Ind. L. Rev. 1311 (1994).

Cited: *Herff Jones, Inc. v. State Bd. of Tax Comm'rs*, 512 N.E.2d 485 (Ind. Tax 1987); *Keller Oil Co. v. Indiana Dep't of Revenue*, 512 N.E.2d 501 (Ind. Tax 1987); *Dunkerson v.*

Indiana Dep't of Revenue, 512 N.E.2d 504 (Ind. Tax 1987); *National Private Trucking Ass'n v. Indiana Dep't of State Revenue*, 512 N.E.2d 928 (Ind. Tax 1987); *Perkins Paving & Trucking, Inc. v. Indiana Dep't of Revenue*, 513 N.E.2d 1267 (Ind. Tax 1987); *Keller v. Indiana Dep't of State Revenue*, 530 N.E.2d 787 (Ind. Tax 1988); *Mynsberge v. State Bd. of Tax Comm'rs*, 612 N.E.2d 1129 (Ind. App. 1993).

NOTES TO DECISIONS

ANALYSIS

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—Evidence sufficient.

Prerequisites.

Statutory requirements.

—Failure to comply.

Timeliness of appeal.

Application and Construction.

Both this section and IC 6-1.1-15-5 apply when determining whether the tax court has jurisdiction and as a result, they must be construed in light of one another. Accordingly, the two statutes do not provide two doors to the courthouse, but rather one grand entrance. *Coachmen Vans v. State Bd. of Tax Comm'rs*, 639 N.E.2d 1066 (Ind. Tax 1994).

Due Process.

By including the controlled substance excise tax (CSET) in the category of assessments which the department of revenue may immediately collect, the legislature has classified this area as one in which the magnitude of the government's need to take action without administrative delay justifies the temporary deprivation of property which may occur, and the CSET does not deny, but merely postpones, due process opportunities, by providing a full and fair opportunity to be heard post-deprivation and the right to block collection efforts by seeking injunctive relief. *Cliff v. Indiana Dep't of State Revenue*, 660 N.E.2d 310 (Ind. 1995).

Exclusive Jurisdiction.

There is no need to allow taxpayers to circumvent the exclusive jurisdiction of the tax court over original tax appeals, because of the legislature's expansion of the jurisdiction of the tax court to allow appeals from a letter of findings and the authorization of injunction proceedings in that court. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).

Plaintiff's claim that 1995 amendment to IC 6-1.1-12-28.5, which eliminated his resource recovery systems deduction, was unconstitutional arose under state tax laws, and his action to enjoin elimination of his deduction should have been brought in tax court, and after administrative review process had begun. *Winski Bros. v. Bayh*, 679 N.E.2d 912 (Ind. App. 1997).

Injunction.

Business user of off-road vehicles fueled with diesel fuel was not entitled to a preliminary injunction against the collection of the

motor carrier fuels tax where the user had an adequate remedy at law, seeking a refund after payment of the tax, and the user had reported zero miles traveled by vehicles subject to the tax though diesel fuel had in fact been used in the vehicles. *R.H. Marlin, Inc. v. Indiana Dep't of Revenue*, 512 N.E.2d 475 (Ind. Tax 1987).

Equitable considerations favoring the enjoining of the collection of the sales tax outweighed the state's interest in collecting the tax pending the original tax appeal, where petitioner was basing its decision not to collect and remit the tax on video rentals in part on information given to its officers by an employee of the department of revenue, and a liquidation of approximately 20 percent of inventory to pay the tax, penalties, and interest might impair the ability of petitioner to operate its business. *Video Tape Exch. Co-op of Am., Inc. v. Indiana Dep't of State Revenue*, 512 N.E.2d 476 (Ind. Tax 1986).

Mere economic injury to petitioner does not warrant the granting of a preliminary injunction. *Faris Mailing, Inc. v. Indiana Dep't of State Revenue*, 512 N.E.2d 480 (Ind. Tax 1987).

It is not necessary that the original tax appeal be filed or be ripe for filing at the time an injunction is requested. The court also does not need to consider or decide whether a final determination has been made or whether the court otherwise has jurisdiction to hear the matter in dispute on the merits. *American Trucking Ass'ns v. State*, 512 N.E.2d 920 (Ind. Tax 1987).

—Evidence Sufficient.

Because petitioner could show local processing at a plant not owned by petitioner some 27 and 60 miles from petitioner's mines was integral to production and that petitioner would suffer economic harm if the injunction was not granted, petitioner has met the burden created by this section. *Energy Supply, Inc. v. Indiana Dep't of State Revenue*, 549 N.E.2d 1110 (Ind. Tax 1990).

Prerequisites.

The administrative step of filing for a claim for refund is required before appealing to the tax court, even if the taxpayer protested the tax payment, where the tax has been paid and a refund is sought. *Gasamerica Servs., Inc. v. State, Dep't of Revenue*, 552 N.E.2d 860 (Ind. 1990).

Statutory Requirements.**—Failure to Comply.**

The taxpayer failed to invoke the tax court's jurisdiction to hear the appeal, since the tax-

Statutory Requirements. (Cont'd)**—Failure to Comply.** (Cont'd)

payer did not comply, either fully or substantially, with the statutory notice requirements of IC 6-1.1-15-5(c)(3) and (d)(1). *Sherry Designs, Inc. v. State Bd. of Tax Comm'rs*, 589 N.E.2d 285 (Ind. Tax 1992).

Timeliness of Appeal.

A taxpayer's failure to timely appeal an assessment deprived the tax court of jurisdic-

tion to review that assessment. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708 (Ind. Tax 1993).

Trial Rule 6(E) adds three days to the time period prescribed in IC 6-1.1-15-5(d) when service is by mail, and as a result taxpayer had 48 days from the day he was given notice from the state board to initiate his appeal, which was therefore timely, and the tax court had jurisdiction to hear his case under this section. *Dziacko v. State Bd. of Tax Comm'rs*, 659 N.E.2d 1165 (Ind. Tax 1995).

33-3-5-12. Small claims docket — Procedures [effective until March 1, 2001]. — (a) The tax court shall establish a small claims docket for processing:

- (1) Claims for refunds from the department of state revenue that do not exceed five thousand dollars (\$5,000) for any year; and
- (2) Appeals of final determinations of assessed value made by the state board of tax commissioners that do not exceed fifteen thousand dollars (\$15,000) for any year.

(b) The tax court shall adopt rules and procedures under which cases on the small claims docket are heard and decided. [P.L.291-1985, § 1.]

33-3-5-12. Small claims docket — Procedures [effective March 1, 2001]. — (a) The tax court shall establish a small claims docket for processing:

- (1) claims for refunds from the department of state revenue that do not exceed five thousand dollars (\$5,000) for any year; and
- (2) appeals of final determinations of assessed value made by the state board of tax commissioners that do not exceed forty-five thousand dollars (\$45,000).

(b) The tax court shall adopt rules and procedures under which cases on the small claims docket are heard and decided. [P.L.291-1985, § 1; P.L.6-1997, § 200.]

Amendments. The 1997 amendment, effective March 1, 2001, substituted "forty-five thousand dollars (\$45,000)" for "fifteen thousand dollars (\$15,000) for any year" in subsection (a)(2).

Effective Dates. P.L.6-1997, § 249, de-

clared an emergency and § 200 provided that the amendment take effect March 1, 2001.

Indiana Law Review. 1992 Developments in Indiana Taxation, 26 Ind. L. Rev. 1145 (1993).

NOTES TO DECISIONS

ANALYSIS

In general.

Board of tax commissioners appeals.

In General.

This section contemplates filings by persons not represented by counsel. *LeSea Broadcasting Corp. v. State Bd. of Tax Comm'rs*, 512 N.E.2d 506 (Ind. Tax 1987).

Board of Tax Commissioners Appeals.

Subsection (a)(2) and Indiana Tax Court Rule 16(A) limit the court's jurisdiction over small claims in appeals from the state board of tax commissioners to cases in which the disputed amount of assessed value is less than \$15,000, regardless of the total assessed value of the property. *Leehaug v. State Bd. of Tax Comm'rs*, 583 N.E.2d 211 (Ind. Tax 1991).

33-3-5-13. Trial without jury — Rules and procedures. — (a) The tax court shall try each original tax appeal without the intervention of a jury.

(b) The tax court shall adopt rules and procedures under which original tax appeals are heard and decided. [P.L.291-1985, § 1.]

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Contingently paid experts.

Constitutionality.

The seventh amendment guarantee of a jury trial is a limitation on the federal government. It does not prohibit states from restricting the right in state courts, and the states may even abolish the right to jury trial absent state constitutional requirements, as in this section. *State Line Elevator, Inc. v. State Bd. of Tax Comm'rs*, 526 N.E.2d 753, modified on reconsideration, 528 N.E.2d 501 (Ind. Tax 1988).

The right to a trial by jury does not include a statutory proceeding, and since a tax appeal

is a statutory proceeding, it is not within the ambit of Ind. Const., art. 1, § 20. *State Line Elevator, Inc. v. State Bd. of Tax Comm'rs*, 526 N.E.2d 753, modified on reconsideration, 528 N.E.2d 501 (Ind. Tax 1988).

Contingently Paid Experts.

The testimony of contingently paid experts is not subject to exclusion in tax court cases solely on the basis of the expert's contingent fee. Such a witness' testimony will be admitted or excluded on the same basis as the testimony of any expert. In other words, the contingent nature of an expert witness' fee goes to the weight, not the admissibility, of the expert's testimony. *Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874 (Ind. Tax 1993).

33-3-5-14. Administrative hearings or proceedings. — With respect to determinations as to whether any issues or evidence may be heard in an original tax appeal that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue and the state board of tax commissioners. [P.L.291-1985, § 1.]

Cited: *North Park Cinemas v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997);

Town of St. John v. State Bd. of Tax Comm'rs, 690 N.E.2d 370 (Ind. Tax 1997).

NOTES TO DECISIONS

Evidence Considered.

A court making a determination under a particular statute must look at the facts as they were found by the administrative agency

and cannot consider evidence that a party failed to submit to the agency. *American Juice Co. v. State Bd. of Tax Comm'rs*, 527 N.E.2d 1169 (Ind. Tax 1988).

33-3-5-15. Written decisions — Remand to state board of tax commissioners — Appeals. — (a) The tax court shall render its decisions in writing.

(b) A decision of the tax court remanding the matter of assessment of property under IC 6-1.1-15-8 to the state board of tax commissioners shall specify the issues on remand on which the state board of tax commissioners is to act.

(c) The decisions of the tax court may be appealed directly to the supreme court. [P.L.291-1985, § 1; P.L.86-1995, § 10.]

Indiana Law Review. 1992 Developments in Indiana Taxation, 26 Ind. L. Rev. 1145 (1993).

33-3-5-16. Fees. — When a complaint is filed, a taxpayer who initiates an original tax appeal shall pay to the clerk of the tax court the same fee as provided in IC 33-19-5-6 for actions in probate court. [P.L.291-1985, § 1; P.L.192-1986, § 25; P.L.305-1987, § 22.]

33-3-5-17. Witnesses — Fee and mileage. — A witness who testifies before the tax court is entitled to receive the same fee and mileage allowance provided to witnesses who testify in a circuit court. The person who calls the witness to testify shall pay the witness fee and mileage allowance. [P.L.291-1985, § 1.]

33-3-5-18. Transcripts — Fee. — The tax court may fix and charge a fee for preparing, comparing, or certifying a transcript. However, the tax court's fee may not exceed the fee charged by circuit courts for the same service. [P.L.291-1985, § 1.]

33-3-5-19. Collection of fees. — The clerk of the tax court shall collect the fees imposed under sections 16 and 18 [IC 33-3-5-16 and IC 33-3-5-18] of this chapter. The clerk shall transmit the fees to the treasurer of state. The treasurer shall deposit the fees in the state general fund. [P.L.291-1985, § 1.]

33-3-5-20. Refund of prevailing taxpayer's filing fee. — If a taxpayer prevails in a complaint that is placed on the small claims docket under section 12 [IC 33-3-5-12] of this chapter, the tax court shall order the refund of the taxpayer's filing fee under section 16 [IC 33-3-5-16] of this chapter from the state general fund. The auditor of state shall pay a warrant that is ordered under this section. [P.L.100-1989, § 2.]

ARTICLE 4

CIRCUIT COURTS — SELECTION OF JURIES

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CHAPTER 1

JUDICIAL CIRCUITS OF INDIANA

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JUDICIAL CIRCUITS IN NUMERICAL ORDER

The judicial circuits are numbered from 1 to 90 inclusive and they are respectively composed of the following counties:

1. Vanderburgh.
2. Warrick.
3. Harrison.
4. Clark.
5. Jefferson and Switzerland.
6. Scott.
7. Dearborn and Ohio.
8. Johnson.
9. Bartholomew.
10. Monroe.
11. Posey.
12. Knox.
13. Clay.
14. Sullivan.
15. Morgan.
16. Shelby.
17. Wayne.
18. Hancock.
19. Marion.
20. Boone.
21. Warren.
22. Montgomery.
23. Tippecanoe.
24. Hamilton.
25. Randolph.
26. Adams.
27. Wabash.
28. Wells.
29. Cass.
30. Jasper.
31. Lake.
32. LaPorte.
33. Noble.
34. Elkhart.
35. LaGrange.
36. Tipton.
37. Franklin.
38. Allen.
39. White.
40. Jackson.
41. Fulton.
42. Washington.
43. Vigo.
44. Starke.
45. Clinton.
46. Delaware.
47. Vermillion.
48. Grant.
49. Daviess.
50. Madison.
51. Miami.
52. Floyd.
53. Henry.
54. Kosciusko.
55. Hendricks.
56. Huntington.
57. Dubois.
58. Jay.
59. Pulaski.
60. St. Joseph.
61. Fountain.
62. Howard.
63. Greene.
64. Putnam.
65. Rush.
66. Gibson.
67. Porter.
68. Parke.
69. Decatur.
70. Perry.
71. Blackford.
72. Marshall.
73. Fayette.
74. Carroll.
75. DeKalb.

76. Benton.

77. Crawford.

78. Owen.

79. Newton.

80. Ripley.

81. Lawrence.

82. Whitley.

83. Pike.
84. Spencer.

85. Steuben.

86. Jennings.

87. Orange.

88. Brown.

89. Union.

90. Martin.

33-4-1-1. Adams County. — The county of Adams shall constitute the twenty-sixth judicial circuit of the state of Indiana. [Acts 1897, ch. 60, § 1, p. 96.]

Cross References. Abolition of term time and vacation time and term of court to be calendar year, IC 33-1-6-1.

Terms of court not recognized, Rule TR. 72. Transfer of cases from superior court to circuit court, IC 33-5-4-1.

33-4-1-2. Allen County. — The county of Allen shall constitute the thirty-eighth circuit. [Acts 1873, ch. 29, § 39, p. 87; 1875, ch. 35, § 1, p. 47.]

33-4-1-2.1. Allen County — Appointment of magistrate. — The judge of the Allen circuit court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judge. [P.L.292-1985, § 1; P.L.334-1989(ss), § 6.]

33-4-1-2.2 — 33-4-1-2.7. [Repealed.]

Compiler’s Notes. These sections, concerning the master commissioner of Allen circuit court and the inherent powers of judi-

cial mandate in Allen County, were repealed by P.L.334-1989(ss), § 48.

33-4-1-2.8. Allen County — Jurisdiction in paternity actions — Hearing officers. — (a) The Allen circuit court has concurrent jurisdiction with the Allen superior court concerning paternity actions.

(b) In addition to the magistrate appointed under section 2.1 [IC 33-4-1-2.1] of this chapter, the judge of the Allen circuit court may appoint a hearing officer with the powers of a magistrate under IC 33-4-7. The hearing officer continues in office until removed by the judge.

(c) The salary of a hearing officer appointed under subsection (b) is equal to that of a magistrate under IC 33-4-7. The hearing officer’s salary must be paid by the county. The hearing officer is a county employee. [P.L.281-1995, § 1.]

33-4-1-3. Bartholomew County. — The county of Bartholomew shall be and constitute the ninth judicial circuit of the state of Indiana. [Acts 1919, ch. 10, § 1, p. 25; 1927, ch. 138, § 1, p. 428; 1965, ch. 328, § 1.]

33-4-1-4. Benton County. — (a) The county of Benton shall constitute the seventy-sixth judicial circuit.

(b) The Benton circuit court has a standard small claims and misdemeanor division. [Acts 1929, ch. 3, § 2, p. 6; P.L.167-1984, § 1.]

33-4-1-4.1, 33-4-1-4.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Benton County, were repealed by P.L.167-1984, § 92.

33-4-1-5. Blackford County. — The county of Blackford shall be and constitute the seventy-first judicial circuit of the state of Indiana. [Acts 1923, ch. 66, § 1, p. 202; 1961, ch. 233, § 1; P.L.167-1984, § 2; P.L.186-1986, § 1.]

33-4-1-5.1, 33-4-1-5.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and the circuit court jurisdiction in Blackford County, were repealed by P.L.167-1984, § 92.

33-4-1-6. Boone County. — The county of Boone shall constitute the twentieth judicial circuit. [Acts 1883, ch. 52, § 1, p. 58.]

33-4-1-7. Brown County. — (a) The county of Brown shall constitute the eighty-eighth judicial circuit of the State of Indiana.

(b) The Brown circuit court has a standard small claims and misdemeanor division.

(c) The judge of the Brown circuit court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judge. [Acts 1899, ch. 126, § 3, p. 198; 1972, P.L. 205, § 1; P.L.167-1984, § 3; P.L.133-1992, § 2.]

33-4-1-7.1, 33-4-1-7.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and the abolishment of former city, town and justices' courts in Brown County, were repealed by P.L.167-1984, § 92.

33-4-1-8. Carroll County. — (a) The county of Carroll shall be and constitute the seventy-fourth judicial circuit of the state of Indiana.

(b) The Carroll circuit court has a standard small claims and misdemeanor division. [Acts 1927, ch. 9, § 1, p. 21; P.L.167-1984, § 4.]

33-4-1-8.1, 33-4-1-8.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Carroll County, were repealed by P.L.167-1984, § 92.

33-4-1-9. Cass County. — The twenty-ninth judicial circuit of the state of Indiana shall consist of the county of Cass. [Acts 1881 (Spec. Sess.), ch. 27, § 1, p. 104; 1955, ch. 198, § 1.]

33-4-1-10. Clark County. — The county of Clark shall constitute the fourth judicial circuit of the state of Indiana. [Acts 1889, ch. 29, § 1, p. 39.]

33-4-1-11. Clay County. — Clay County shall constitute the 13th judicial circuit. [Acts 1911, ch. 55, § 1, p. 83.]

33-4-1-12. Clinton County. — The county of Clinton shall constitute the forty-fifth judicial circuit. [Acts 1883, ch. 52, § 2, p. 58.]

33-4-1-13. Crawford County. — (a) The county of Crawford constitutes the seventy-seventh judicial circuit.

(b) The Crawford circuit court has a standard small claims and misdemeanor division. [Acts 1919, ch. 8, § 2, p. 17; 1921, ch. 41, § 1, p. 112; 1923, ch. 160, § 1, p. 456; 1929, ch. 174, § 1, p. 572; 1935, ch. 310, § 1, p. 1498; P.L.292-1983, § 3; P.L.167-1984, § 4.]

33-4-1-14. Daviess County. — The county of Daviess shall be and constitute the forty-ninth judicial circuit of the state of Indiana. [Acts 1947, ch. 7, § 1.]

33-4-1-14.1, 33-4-1-14.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and jurisdiction of the Daviess Circuit Court, were repealed by Acts 1976, P.L. 132, § 45.

33-4-1-15. Dearborn and Ohio Counties. — The counties of Dearborn and Ohio shall constitute the seventh judicial circuit of the state of Indiana. [Acts 1897, ch. 134, § 1, p. 204.]

Compiler's Notes. This section is duplicated as IC 33-4-1-58.

33-4-1-16. Decatur County. — The county of Decatur shall be and constitute the sixty-ninth judicial circuit of the state of Indiana. [Acts 1919, ch. 10, § 1, p. 25; 1927, ch. 138, § 1, p. 428; 1965, ch. 328, § 1.]

33-4-1-17. DeKalb County. — The county of DeKalb shall be and constitute the seventy-fifth judicial circuit of the state of Indiana. [Acts 1927, ch. 51, § 1, p. 136.]

33-4-1-18. Delaware County. — The county of Delaware, in said state, shall constitute the forty-sixth judicial circuit. [Acts 1885, ch. 27, § 2, p. 50.]

33-4-1-19. Dubois County. — The county of Dubois shall be and constitute the fifty-seventh judicial circuit of the state of Indiana. [Acts 1947, ch. 7, § 1; Acts 1980, P.L. 187, § 1.]

33-4-1-20. Elkhart County. — The county of Elkhart shall be and constitute the thirty-fourth judicial circuit of the state of Indiana. [Acts 1927, ch. 51, § 1, p. 136.]

33-4-1-20.1. Elkhart County — Appointment of magistrate. — (a) The judges of the Elkhart circuit and superior courts may jointly appoint

one (1) full-time magistrate under IC 33-4-7 to serve the circuit and superior courts.

(b) The magistrate continues in office until removed by the judges of the circuit and superior courts. [P.L.18-1995, § 16.]

33-4-1-21. Fayette County. — The county of Fayette shall be and constitute the seventy-third judicial circuit of the state of Indiana. [Acts 1921, ch. 217, § 2, p. 592.]

33-4-1-22. Floyd County. — The county of Floyd shall constitute the fifty-second judicial circuit. [Acts 1889, ch. 29, § 1, p. 39.]

33-4-1-23. Fountain County. — (a) The county of Fountain shall constitute the sixty-first judicial circuit.

(b) The Fountain circuit court has a standard small claims and misdemeanor division. [Acts 1905, ch. 68, § 2, p. 119; P.L.167-1984, § 6.]

33-4-1-23.1, 33-4-1-23.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Fountain County, were repealed by P.L.167-1984, § 92.

33-4-1-24. Franklin County. — (a) The county of Franklin shall constitute the thirty-seventh judicial circuit.

(b) The Franklin circuit court has a standard small claims and misdemeanor division. [Acts 1921, ch. 217, § 1, p. 592; 1974, P.L. 137, § 1; P.L.167-1984, § 7.]

33-4-1-24.1, 33-4-1-24.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket in Franklin County and jurisdiction of former city, town and justices' courts in Franklin County, were repealed by P.L.167-1984, § 92 and P.L.1-1990, § 316.

33-4-1-25. Fulton County. — The county of Fulton shall be and constitute the forty-first judicial circuit of the state of Indiana. [Acts 1927, ch. 12, § 1, p. 38.]

33-4-1-25.1. [Repealed.]

Compiler's Notes. This section, concerning small claims docket in Fulton County, was repealed by Acts 1977, P.L. 322, § 2.

33-4-1-25.2. [Repealed.]

Compiler's Notes. This section, concerning jurisdiction of the Fulton circuit court, was repealed by Acts 1977, P.L. 322, § 2.

33-4-1-26. Gibson County. — The county of Gibson shall constitute the sixty-sixth judicial circuit. [Acts 1913, ch. 3, § 2, p. 7.]

33-4-1-27. Grant County. — The county of Grant shall constitute the forty-eighth judicial circuit. [Acts 1893, ch. 144, § 2, p. 313; 1957, ch. 96, § 1.]

33-4-1-28. Greene County. — The county of Greene shall be and constitute the sixty-third judicial circuit. [Acts 1911, ch. 13, § 1, p. 25; 1953, ch. 179, § 1; 1959, ch. 249, § 1.]

33-4-1-29. Hamilton County. — The county of Hamilton shall constitute the twenty-fourth judicial circuit. [Acts 1889, ch. 11, § 1, p. 11.]

33-4-1-30. Hancock County. — The county of Hancock in said state shall constitute the eighteenth judicial circuit. [Acts 1889, ch. 20, § 1, p. 29.]

33-4-1-31. Harrison County. — The county of Harrison constitutes the third judicial circuit. [Acts 1919, ch. 8, § 2, p. 17; 1921, ch. 41, § 1, p. 112; 1923, ch. 160, § 1, p. 456; 1929, ch. 174, § 1, p. 572; 1935, ch. 310, § 1, p. 1498.]

33-4-1-32. Hendricks County. — The county of Hendricks shall constitute the fifty-fifth judicial circuit. [Acts 1889, ch. 36, § 2, p. 50; 1957, ch. 56, § 1.]

33-4-1-33. Henry County. — The county of Henry in said state shall constitute the fifty-third judicial circuit. [Acts 1889, ch. 20, § 2, p. 29.]

33-4-1-34. Howard County. — The county of Howard shall constitute the sixty-second judicial circuit of the state of Indiana. [Acts 1909, ch. 35, § 1, p. 79.]

33-4-1-35. Huntington County. — The county of Huntington shall constitute the fifty-sixth judicial circuit. [Acts 1893, ch. 144, § 3, p. 313.]

33-4-1-36. Jackson County. — The county of Jackson shall be and constitute the fortieth judicial circuit of the state of Indiana. [Acts 1941, ch. 9, § 1, p. 13.]

33-4-1-37. Jasper County. — (a) The county of Jasper shall be and constitute the thirtieth judicial circuit of the State of Indiana.

(b) The Jasper circuit court has a standard small claims and misdemeanor division. [Acts 1929, ch. 245, § 1 (Acts 1933, p. 1260); P.L.18-1995, § 17.]

33-4-1-38. Jay County. — The county of Jay, in said state, shall constitute the fifty-eighth judicial circuit. [Acts 1897, ch. 60, § 2, p. 96.]

33-4-1-39. Jefferson and Switzerland Counties. — The counties of Jefferson and Switzerland shall constitute the fifth judicial circuit of the state of Indiana. [Acts 1897, ch. 134, § 1, p. 204.]

Compiler's Notes. This section is duplicated as IC 33-4-1-78.

33-4-1-40. Jennings County. — (a) The county of Jennings shall be and constitute the eighty-sixth judicial circuit of the state of Indiana.

(b) The Jennings circuit court has a standard small claims and misdemeanor division. [Acts 1935, ch. 137, § 1, p. 484; 1971, P.L. 428, § 2; P.L.167-1984, § 8.]

33-4-1-40.1, 33-4-1-40.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Jennings County, were repealed by P.L.167-1984, § 92.

33-4-1-41. Johnson County. — The county of Johnson shall constitute the eighth judicial circuit of the state of Indiana. [Acts 1899, ch. 126, § 3, p. 198; 1972, P.L. 205, § 2.]

33-4-1-41.1. Johnson County — Appointment of magistrate. — (a) The judges of the Johnson circuit and superior courts may jointly appoint one (1) full-time magistrate to serve both the circuit and superior courts.

(b) The magistrate continues in office until removed by the judges of the Johnson circuit and superior courts. [P.L.40-1990, § 4.]

33-4-1-42. Knox County. — The county of Knox shall constitute the twelfth judicial circuit. [Acts 1885 (Spec. Sess.), ch. 28, § 2, p. 118.]

33-4-1-43. Kosciusko County. — The fifty-fourth judicial circuit of the state of Indiana shall be composed of the county of Kosciusko. [Acts 1889, ch. 42, § 3, p. 61.]

33-4-1-44. LaGrange County. — The county of LaGrange shall be and constitute the thirty-fifth judicial circuit of the state of Indiana. [Acts 1953, ch. 9, § 1.]

33-4-1-45. Lake County — Appointment of magistrate. — (a) The county of Lake shall constitute the 31st judicial circuit.

(b) The judge of the Lake circuit court may appoint one (1) full-time magistrate under IC 33-4-7 to serve the domestic relations counseling bureau established under IC 31-12-2. The judge shall specify the duties of a magistrate appointed under this subsection. A magistrate continues in office until removed by the judge of the circuit court. [Acts 1913, ch. 34, § 1, p. 62; P.L.18-1995, § 18; P.L.1-1997, § 121.]

33-4-1-46. LaPorte County. — The county of Laporte shall constitute the thirty-second judicial circuit. [Acts 1897, ch. 13, § 1, p. 13.]

33-4-1-47. Lawrence County. — The county of Lawrence shall be and constitute the eighty-first judicial circuit of the state of Indiana. [Acts 1941, ch. 9, § 1, p. 13.]

33-4-1-48. Madison County. — The county of Madison shall constitute the fiftieth judicial circuit. [Acts 1889, ch. 11, § 2, p. 11.]

33-4-1-49. Marion County. — Marion County shall constitute the 19th judicial circuit. [Acts 1889, ch. 36, § 1, p. 50.]

33-4-1-50. Marshall County. — The county of Marshall shall be and constitute the seventy-second judicial circuit of the state of Indiana. [Acts 1927, ch. 12, § 1, p. 38.]

33-4-1-51. Martin County. — (a) The county of Martin shall be and constitute the ninetieth judicial circuit of the state of Indiana.

(b) The Martin circuit court has a standard small claims and misdemeanor division. [Acts 1947, ch. 7, § 1; Acts 1980, P.L. 187, § 2; P.L.167-1984, § 9.]

33-4-1-51.1. [Repealed.]

Compiler's Notes. This section, concerning the small claims and misdemeanor division in Martin County, was amended in 1984

by P.L.171-1984, § 18, and repealed by P.L.167-1984, § 92.

33-4-1-52. Miami County. — That the county of Miami shall constitute the fifty-first judicial circuit of Indiana. [Acts 1889, ch. 16, § 2, p. 21.]

33-4-1-53. Monroe County. — (a) The county of Monroe shall be and constitute the tenth judicial circuit of the state of Indiana.

(b) There are seven (7) judges of the Monroe circuit court. [Acts 1937, ch. 73, § 1, p. 401; P.L.40-1990, § 5; P.L.18-1995, § 19.]

Compiler's Notes. P.L.18-1995, § 135, effective May 10, 1995, provides:

"(a) Before June 30, 1995, the governor shall appoint a qualified individual to serve as the seventh judge of the Monroe circuit court under IC 33-4-1-53, as amended by this act, for a term beginning July 1, 1995, and ending December 31, 1998.

"(b) The initial election of the judge added

to the Monroe circuit court under IC 33-4-1-53, as amended by this act, is the general election to be held November 3, 1998. The person elected takes office January 1, 1999.

"(c) This SECTION expires January 2, 1999."

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

33-4-1-54. Montgomery County. — The twenty-second judicial circuit of the state of Indiana shall be composed of the county of Montgomery. [Acts 1885, ch. 19, § 2, p. 28.]

33-4-1-55. Morgan County. — The county of Morgan shall constitute the fifteenth judicial circuit. [Acts 1911, ch. 131, § 3, p. 327; 1955, ch. 213, § 1.]

33-4-1-56. Newton County. — (a) The county of Newton shall be and constitute the seventy-ninth judicial circuit of the state of Indiana.

(b) The Newton circuit court has a standard small claims and misdemeanor division. [Acts 1929, ch. 245, § 1 (Acts 1933, p. 1260); P.L.167-1984, § 10.]

33-4-1-56.1, 33-4-1-56.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Newton County, were repealed by P.L.167-1984, § 92.

33-4-1-57. Noble County. — The county of Noble shall be and constitute the thirty-third judicial circuit of the state of Indiana. [Acts 1943, ch. 26, § 1, p. 55.]

33-4-1-58. Ohio and Dearborn Counties. — The counties of Dearborn and Ohio shall constitute the seventh judicial circuit of the state of Indiana. [Acts 1897, ch. 134, § 1, p. 204.]

Compiler's Notes. This section is duplicated as IC 33-4-1-15.

33-4-1-59. Orange County. — The county of Orange shall be and constitute the eighty-seventh judicial circuit of the state of Indiana. [Acts 1889, ch. 91, § 1, p. 189; 1972, P.L. 206, § 1.]

33-4-1-59.1, 33-4-1-59.2. [Repealed.]

Compiler's Notes. These sections, concerning the Orange County small claims docket, were repealed by Acts 1978, P.L. 141, § 6.

33-4-1-60. Owen County. — (a) The county of Owen shall be and constitute the seventy-eighth judicial circuit of the state of Indiana.

(b) The Owen circuit court has a standard small claims and misdemeanor division. [Acts 1937, ch. 73, § 1, p. 401; P.L.167-1984, § 11.]

33-4-1-60.1, 33-4-1-60.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Owen County, were repealed by P.L.167-1984, § 92.

33-4-1-61. Parke County. — (a) The county of Parke [shall] be and shall constitute the sixty-eighth judicial circuit of the state of Indiana.

(b) The Parke circuit court has a standard small claims and misdemeanor division. [Acts 1915, ch. 21, § 1, p. 38; 1941, ch. 105, § 1, p. 268; 1945, ch. 146, § 1, p. 340; P.L.167-1984, § 12.]

Compiler's Notes. The bracketed word "shall" in subsection (a) was inserted by the compiler.

33-4-1-61.1, 33-4-1-61.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Parke County, were repealed by P.L.167-1984, § 92.

33-4-1-62. Perry County. — (a) The county of Perry shall be and constitute the seventieth judicial circuit of the state of Indiana.

(b) The Perry circuit court has a standard small claims and misdemeanor division. [Acts 1953, ch. 6, § 1; P.L.167-1984, § 13.]

33-4-1-62.1, 33-4-1-62.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and jurisdiction of the circuit court in Perry County, were repealed by P.L.167-1984, § 92.

33-4-1-63. Pike County. — (a) The county of Pike shall be and constitute the eighty-third judicial circuit of the state of Indiana.

(b) The Pike circuit court has a standard small claims and misdemeanor division. [Acts 1945, ch. 37, § 1, p. 79; P.L.167-1984, § 14.]

33-4-1-63.1, 33-4-1-63.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Pike County, were repealed by P.L.167-1984, § 92.

33-4-1-64. Porter County. — The county of Porter shall constitute the sixty-seventh judicial circuit. [Acts 1913, ch. 34, § 2, p. 62.]

33-4-1-65. Posey County. — Posey County shall constitute the eleventh judicial circuit. [Acts 1913, ch. 3, § 1, p. 7; 1919, ch. 164, § 1, p. 704; 1955, ch. 214, § 1.]

33-4-1-66. Pulaski County. — The county of Pulaski shall be and constitute the fifty-ninth judicial circuit of the state of Indiana. [Acts 1935, ch. 136, § 1, p. 482.]

33-4-1-66.1, 33-4-1-66.2. [Repealed.]

Compiler's Notes. These sections, pertaining to small claims docket in Pulaski County and jurisdiction of Pulaski circuit court were repealed by Acts 1977, P.L. 322, § 2.

33-4-1-67. Putnam County. — The county of Putnam shall constitute the sixty-fourth judicial circuit. [Acts 1911, ch. 55, § 2, p. 83; 1923, ch. 100, § 1, p. 275.]

33-4-1-68. Randolph County. — The county of Randolph, in said state, shall constitute the twenty-fifth judicial circuit. [Acts 1885, ch. 27, § 1, p. 50.]

33-4-1-69. Ripley County. — (a) The county of Ripley shall be and constitute the eightieth judicial circuit of the state of Indiana.

(b) The Ripley circuit court has a standard small claims and misdemeanor division. [Acts 1935, ch. 137, § 1, p. 484; P.L.167-1984, § 15.]

33-4-1-69.1, 33-4-1-69.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Ripley County, were repealed by P.L.167-1984, § 92.

33-4-1-70. Rush County. — The county of Rush shall constitute the sixty-fifth judicial circuit of the state of Indiana. [Acts 1913, ch. 2, § 1, p. 4.]

33-4-1-71. Scott County. — The county of Scott shall be and constitute the sixth judicial circuit of the state of Indiana. [Acts 1935, ch. 137, § 1, p. 484; 1971, P.L. 428, § 1.]

33-4-1-71.1, 33-4-1-71.2. [Repealed.]

Compiler's Notes. These sections, concerning the Scott County small claims docket, were repealed by Acts 1978, P.L. 141, § 7(a). For establishment of county courts, see IC 33-10.5-1-4.

33-4-1-72. Shelby County. — The county of Shelby shall constitute the sixteenth judicial circuit. [Acts 1913, ch. 2, § 1, p. 4.]

33-4-1-73. Spencer County. — (a) The county of Spencer shall be and constitute the eighty-fourth judicial circuit of the state of Indiana.

(b) The Spencer circuit court has a standard small claims and misdemeanor division. [Acts 1953, ch. 6, § 1; P.L.167-1984, § 16.]

33-4-1-73.1, 33-4-1-73.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Spencer County, were repealed by P.L.167-1984, § 92.

33-4-1-74. Starke County. — (a) The county of Starke shall be and constitute the forty-fourth judicial circuit of the state of Indiana.

(b) The Starke circuit court has a standard small claims and misdemeanor division. [Acts 1935, ch. 136, § 1, p. 482; P.L.167-1984, § 17.]

33-4-1-74.1, 33-4-1-74.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Starke County, were repealed by P.L.167-1984, § 92.

33-4-1-74.3. Starke County — Appointment of magistrate. — The judge of the Starke circuit court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judge. [IC 33-4-1-74.3, as added by Acts 1977, P.L. 314, § 1; P.L.334-1989(ss), § 7.]

Cited: *Morlan v. State*, 491 N.E.2d 1001 (Ind. App. 1986).

33-4-1-74.4, 33-4-1-74.5. [Repealed.]

Compiler's Notes. These sections, concerning the powers and duties of the master commissioner of Starke County and allowing

him to serve as a judge pro tempore of the court, were repealed by P.L.334-1989(ss), § 48.

33-4-1-74.6. Starke County — Powers of judge. — All inherent powers of judicial mandate in Starke county remain vested solely in the judge of the Starke Circuit Court. [IC 33-4-1-74.6, as added by Acts 1977, P.L. 314, § 4.]

33-4-1-74.7 — 33-4-1-74.9. [Repealed.]

Compiler's Notes. These sections, providing for the salary of the master commissioner of Starke County, prohibiting the master commissioner from the practice of law, and pro-

viding for the master commissioner's retirement fund participation, were repealed by P.L.334-1989(ss), § 48.

33-4-1-75. St. Joseph County. — The county of St. Joseph shall constitute the sixtieth judicial circuit. [Acts 1897, ch. 13, § 2, p. 13; 1901, ch. 31, § 1, p. 38.]

33-4-1-75.1. St. Joseph County — Appointment of magistrate. — The judge of the St. Joseph circuit court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judge. [IC 33-4-1-75.1, as added by Acts 1980, P.L. 188, § 1; 1981, P.L. 274, § 2; P.L.171-1984, § 19; P.L.294-1985, § 1; P.L.187-1986, § 1; P.L.378-1987(ss), § 5; P.L.334-1989(ss), § 8.]

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Trial rule subordinate.

Constitutionality.

Subsection (c) of this section is unconstitutional since a master commissioner appointed by the judge cannot exercise judicial powers. This holding has only prospective application and applies to or affects only cases

which at the time of this holding (March 23, 1981) had not yet reached final judgment or had not yet had a ruling on a motion to correct errors. *State ex rel. Smith v. Starke Circuit Court*, 275 Ind. 483, 417 N.E.2d 1115 (1981).

Trial Rule Subordinate.

When a master commissioner is properly appointed pursuant to this section, TR. 53 does not apply. *Kruse v. Kruse*, 464 N.E.2d 934 (Ind. App. 1984).

33-4-1-75.2. Use of computerized jury selection system in St. Joseph County. — Notwithstanding any other provision of this title, the jury

commissioners, the superior court, and the circuit court of St. Joseph County may utilize a computerized jury selection system. However, the system utilized for the selection of jurors must be fair and may not violate the rights of persons with respect to the impartial and random selection of prospective jurors. [IC 33-4-1-75.2, as added by P.L.300-1983, § 1.]

33-4-1-75.3. Reference to judges' retirement system. — A reference to the judges' retirement system under IC 33-13-8 shall be deemed a reference to the judges' retirement fund under IC 33-13. [P.L.293-1985, § 2.]

33-4-1-76. Steuben County. — The county of Steuben shall be and constitute the eighty-fifth judicial circuit of the state of Indiana. [Acts 1953, ch. 9, § 1.]

33-4-1-76.1. Steuben County — Appointment of magistrate. — (a) The judges of the Steuben circuit and superior courts may jointly appoint one (1) full-time magistrate under IC 33-4-7 to serve the circuit and superior courts.

(b) The magistrate continues in office until removed by the judges of the Steuben circuit and superior courts. [P.L.18-1995, § 20.]

33-4-1-77. Sullivan County. — The county of Sullivan shall be and constitute the fourteenth judicial circuit. [Acts 1911, ch. 13, § 1, p. 25; 1953, ch. 179, § 1; 1959, ch. 249, § 1.]

33-4-1-78. Switzerland and Jefferson Counties. — The counties of Jefferson and Switzerland shall constitute the fifth judicial circuit of the state of Indiana. [Acts 1897, ch. 134, § 1, p. 204.]

Compiler's Notes. This section is duplicated as IC 33-4-1-39.

33-4-1-79. Tippecanoe County. — The county of Tippecanoe shall constitute the twenty-third circuit. [Acts 1873, ch. 29, § 24, p. 87; 1877 (Spec. Sess.), ch. 11, § 1, p. 31.]

33-4-1-80. Tipton County. — (a) The county of Tipton shall constitute the thirty-sixth judicial circuit.

(b) The Tipton circuit court has a standard small claims and misdemeanor division. [Acts 1909, ch. 35, § 1, p. 79; P.L.167-1984, § 18.]

33-4-1-80.1, 33-4-1-80.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Tipton County, were repealed by P.L.167-1984, § 92.

33-4-1-81. Union County. — (a) The county of Union shall constitute the eighty-ninth judicial circuit.

(b) The Union circuit court has a standard small claims and misdemeanor division. [Acts 1921, ch. 217, § 1, p. 592; 1974, P.L. 137, § 4; P.L.167-1984, § 19.]

33-4-1-81.1, 33-4-1-81.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Union County, were repealed by P.L.167-1984, § 92.

33-4-1-82. Vanderburgh County. — The county of Vanderburgh shall constitute the first judicial circuit. [Acts 1895, ch. 76, § 1, p. 164; 1935, ch. 23, § 1, p. 81.]

33-4-1-82.1. Vanderburgh County — Appointment of magistrate. — The judge of the Vanderburgh circuit court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judge. [IC 33-4-1-82.1, as added by Acts 1977, P.L. 314, § 8; P.L.334-1989(ss), § 9.]

33-4-1-82.2, 33-4-1-82.3. [Repealed.]

Compiler's Notes. These sections, providing for the powers and duties of the master commissioner of Vanderburgh County and allowing the master commissioner to serve as judge pro tempore or special judge, were repealed by P.L.334-1989(ss), § 48.

33-4-1-82.4. Vanderburgh County — Powers of circuit judge. — All inherent powers of judicial mandate in Vanderburgh county remain vested in the judges of the county. [IC 33-4-1-82.4, as added by Acts 1977, P.L. 314, § 11.]

33-4-1-82.5 — 33-4-1-82.7. [Repealed.]

Compiler's Notes. These sections, providing the salary of the master commissioner, prohibiting the master commissioner to practice law, and providing for the master commissioner's retirement fund participation, were repealed by P.L.334-1989(ss), § 48.

33-4-1-83. Vermillion County. — (a) The county of Vermillion shall be and constitute the forty-seventh judicial circuit of the state of Indiana.

(b) The Vermillion circuit court has a standard small claims and misdemeanor division. [Acts 1915, ch. 21, § 1, p. 38; 1941, ch. 105, § 1, p. 268; 1945, ch. 146, § 1, p. 340; P.L.167-1984, § 20.]

33-4-1-83.1, 33-4-1-83.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Vermillion County, were repealed by P.L.167-1984, § 92.

33-4-1-84. Vigo County. — The county of Vigo shall constitute the forty-third judicial circuit. [Acts 1883, ch. 13, § 3, p. 13.]

33-4-1-85. Wabash County. — The county of Wabash shall constitute the twenty-seventh judicial circuit of Indiana. [Acts 1873, ch. 29, § 28, p. 87; 1889, ch. 16, § 1, p. 21.]

33-4-1-86. Warren County. — (a) The county of Warren shall constitute the twenty-first judicial circuit of the state of Indiana.

(b) The Warren circuit court has a standard small claims and misdemeanor division. [Acts 1929, ch. 3, § 1, p. 6; P.L.167-1984, § 21.]

33-4-1-86.1, 33-4-1-86.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Warren County, were repealed by P.L.167-1984, § 92.

33-4-1-87. Warrick County. — Warrick County shall constitute the second judicial circuit. [Acts 1919, ch. 8, § 1, p. 17.]

33-4-1-88. Washington County. — (a) The county of Washington shall be and constitute the forty-second judicial circuit of the state of Indiana.

(b) The Washington circuit court has a standard small claims and misdemeanor division. [Acts 1889, ch. 91, § 1, p. 189; 1972, P.L. 206, § 2; P.L.167-1984, § 22.]

33-4-1-88.1, 33-4-1-88.2. [Repealed.]

Compiler's Notes. These sections, concerning the small claims docket and circuit court jurisdiction in Washington County, were repealed by P.L.167-1984, § 92.

33-4-1-89. Wayne County. — The county of Wayne shall constitute the seventeenth circuit. [Acts 1873, ch. 29, § 18, p. 87.]

33-4-1-90. Wells County. — The county of Wells shall be and constitute the twenty-eighth judicial circuit of the state of Indiana. [Acts 1923, ch. 66, § 1, p. 202; 1961, ch. 233, § 1.]

33-4-1-91. White County. — The county of White shall be and constitute the thirty-ninth judicial circuit of the state of Indiana. [Acts 1927, ch. 9, § 1, p. 21.]

33-4-1-92. Whitley County. — The county of Whitley shall be and constitute the eighty-second judicial circuit of the state of Indiana. [Acts 1943, ch. 26, § 1, p. 55.]

CHAPTER 2

POWERS AND AUTHORITY OF CIRCUIT COURTS

SECTION.

33-4-2-1. Process — Power to issue.

33-4-2-2. New writs when form not prescribed.

SECTION.

33-4-2-3. Powers in general.

33-4-2-4. Jurisdiction when subject matter in two or more counties.

SECTION.
33-4-2-5. Commissions for examination of witnesses.
33-4-2-6. Seal.
33-4-2-7. Private seal — When may be used.
33-4-2-8. Oaths — Contempts.
33-4-2-9. Recognizances — Judges make take.

SECTION.
33-4-2-10. Failure of judge to attend — No discontinuance.
33-4-2-11. Elisor — Appointment.
33-4-2-12. Elisor — Duties.

33-4-2-1. Process — Power to issue. — They shall have power to issue and direct all processes, to courts of inferior jurisdiction, and to corporations and individuals which shall be necessary to the regular execution of the law. [2 R.S. 1852, ch. 4, § 6, p. 5.]

Cited: Indiana Bell Tel. Co. v. State, 274 Ind. 131, 78 Ind. Dec. 189, 409 N.E.2d 1089 (1980); Harp v. Indiana Dep't of Hwys., 585 N.E.2d 652 (Ind. App. 1992).

33-4-2-2. New writs when form not prescribed. — Where there shall be occasion for any process for which no form is prescribed by law, such court shall frame a new writ in conformity with the principles thereof. [2 R.S. 1852, ch. 4, § 7, p. 5.]

33-4-2-3. Powers in general. — Such courts shall have power to make all proper judgments, sentences, decrees, orders and injunctions, and to issue all processes, and to do such other acts as may be proper to carry into effect the same, in conformity with the constitution and laws of this state. [2 R.S. 1852, ch. 4, § 8, p. 5.]

NOTES TO DECISIONS

ANALYSIS

Changing judgment of court of equal rank.
Incidental powers.

Changing Judgment of Court of Equal Rank.

In view of this section and of IC 33-4-2-4, the circuit court does not have jurisdiction to vacate, change, set aside or modify a judgment of a court of similar jurisdiction of equal rank. Traders Loan & Inv. Co. v. Houchins, 195 Ind. 256, 144 N.E. 879 (1924).

Incidental Powers.

Courts of general jurisdiction have the incidental powers that are necessary for the proper discharge of their judicial functions. Board of County Comm'rs v. Stout, 136 Ind.

53, 35 N.E. 683, 22 L.R.A. 398 (1893).

Powers of circuit courts in regard to the repair of courthouses or courtrooms, and the control of courthouses insofar as the same affects the transaction of the business of the courts. Board of County Comm'rs v. Stout, 136 Ind. 53, 35 N.E. 683, 22 L.R.A. 398 (1893); Board of Comm'rs v. Gwin, 136 Ind. 562, 36 N.E. 237, 22 L.R.A. 402 (1894).

Powers not strictly judicial may be conferred on judges of courts. City of Terre Haute v. Evansville & T.H.R.R., 149 Ind. 174, 46 N.E. 77, 37 L.R.A. 189 (1897); Wilkison v. Board of Children's Guardians, 158 Ind. 1, 62 N.E. 481 (1902); Bemis v. Guirl Drainage Co., 182 Ind. 36, 105 N.E. 496 (1914); Board of Fin. v. First Nat'l Bank, 71 Ind. App. 290, 124 N.E. 768 (1919).

33-4-2-4. Jurisdiction when subject matter in two or more counties. — When the subject matter of any [suit in] such court shall be situate in two (2) or more counties, the court which shall first take cognizance thereof shall retain the same. [2 R.S. 1852, ch. 4, § 9, p. 5.]

Compiler's Notes. The bracketed words "suit in" in this section were inserted by the compiler.

Cross References. Jurisdiction of circuit courts, IC 33-4-4-3.

Indiana Law Journal. Quiet Title Actions in Indiana: Suggested Reforms, 39 Ind. L.J. 807.

NOTES TO DECISIONS

ANALYSIS

In general.

Drains and dams.

Mortgage foreclosure and partition.

In General.

When the subject matter of a suit is situate in two or more counties, the court first taking jurisdiction retains the same. *Lake Shore & M.S.R.R. v. Clough*, 182 Ind. 178, 104 N.E. 975 (1914), *aff'd*, 242 U.S. 375, 37 S. Ct. 144, 61 L. Ed. 374 (1917).

One circuit court does not have jurisdiction to vacate, change, set aside or modify the judgment of a court of similar jurisdiction or equal rank. *Traders Loan & Inv. Co. v. Houchins*, 195 Ind. 256, 144 N.E. 879 (1924).

Where plaintiff in second action was not party in first action in another county but the subject matter of the circuit court cases (the validity of the *lis pendens* notice and the disposition of the defendant's property in the first county) was identical, the circuit court's decision in the second action to defer the ruling on the motion to strike *lis pendens* notice to the circuit court of the first county was not in error. *Farmers Nat'l Bank v. Arnett*, 511 N.E.2d 510 (Ind. App. 1987).

33-4-2-5. Commissions for examination of witnesses. — Such courts shall also have power and authority to grant commissions for the examination of witnesses, according to the regulations of law. [2 R.S. 1852, ch. 4, § 10, p. 5.]

33-4-2-6. Seal. — The circuit court of each county shall have a seal, a description of which, signed by the judge devising the same, shall be filed by the clerk, and recorded. [2 R.S. 1852, ch. 4, § 11, p. 5.]

NOTES TO DECISIONS

ANALYSIS

Affidavits.

Transcripts of records.

Affidavits.

The seal need not be used to jurats to affidavits sworn to before the clerk and to be used in such courts. *Mountjoy v. State*, 78 Ind. 172 (1881).

Drains and Dams.

If, under the law, the court in one county has authority to construct a drain extending into another county, the courts of the latter county cannot interfere with the construction of such drain by injunction. *Karr v. Board of County Comm'rs*, 170 Ind. 571, 85 N.E. 1 (1908); *Lake Shore & M.S.R.R. v. Clough*, 182 Ind. 178, 104 N.E. 975 (1914).

Where plaintiff's premises in one county were flooded by the construction of a dam in another county, the court of the county in which the land was located had jurisdiction of an action for damages, for under the circumstances the venue could be laid in either county. *Overmyer v. Barnett*, 70 Ind. App. 569, 123 N.E. 654 (1919).

Mortgage Foreclosure and Partition.

Where a mortgage embraces lands in several counties, jurisdiction of a suit to foreclose it is in the circuit court of either county. *Holmes v. Taylor*, 48 Ind. 169 (1874).

The same rule applies in actions for partition. *Shull v. Kennon*, 12 Ind. 34 (1859); *Jones v. Levi*, 72 Ind. 586 (1880).

Transcripts of Records.

Certificates to transcripts of records made by the clerk of the court must be attested by the seal of the court. *Brunt v. State ex rel. French*, 36 Ind. 330 (1871); *Conkey v. Conder*, 137 Ind. 441, 37 N.E. 132 (1894); *Johnson v. Johnson*, 156 Ind. 592, 60 N.E. 451 (1901); *State ex rel. Miller v. Webster*, 157 Ind. 508, 62 N.E. 8 (1901); *Comstock v. Stoner*, 30 Ind. App. 529, 66 N.E. 501 (1903); *Hurst v. Mann*, 51 Ind. App. 466, 99 N.E. 828 (1912).

33-4-2-7. Private seal — When may be used. — In all new counties, where seals for the circuit courts thereof have not been devised, it shall be lawful for the clerks thereof to seal all papers, where the seal of such courts shall be required by law, with his own private seal, and the same shall have like force as if they had been sealed with a seal devised by such courts. [2 R.S. 1852, ch. 4, § 12, p. 5.]

33-4-2-8. Oaths — Contempts. — The said circuit courts, respectively, shall have full authority to administer all necessary oaths, and to punish, by fine and imprisonment, or either, all contempts of their authority and process in any matter before them, or by which the proceedings of the court, or the due course of justice, is interrupted. [2 R.S. 1852, ch. 4, § 13, p. 5.]

Cross References. Contempts defined and proceedings prescribed, IC 34-47.

NOTES TO DECISIONS

ANALYSIS

In general.
Criminal contempts.
—Implied partial repeal.
Direct contempts.
Imprisonment.
Indirect contempts.
Injunction.
Officer's refusal to act.
Review on appeal.
Subpoena.

In General.

Courts of superior jurisdiction have an inherent power to determine what is a contempt of their authority, and to punish the same, which power cannot be abridged by the legislature. *Little v. State*, 90 Ind. 338, 46 Am. R. 224 (1883); *Holman v. State*, 105 Ind. 513, 5 N.E. 556 (1886); *Cheadle v. State*, 110 Ind. 301, 11 N.E. 426, 59 Am. R. 199 (1887); *Hawkins v. State*, 125 Ind. 570, 25 N.E. 818 (1890).

Criminal Contempts.

—Implied Partial Repeal.

This section, insofar as it applies to criminal contempts, is impliedly repealed by the contempt statute, former IC 34-4-7-1, IC 34-4-7-10, IC 34-4-8-1, and IC 34-4-8-2 (repealed; for present similar provisions, see IC 34-47-1-1, IC 34-47-2-1). *Denny v. State ex rel. Brady*, 203 Ind. 682, 182 N.E. 313 (1932).

Direct Contempts.

Disorderly conduct or insulting demeanor of an attorney to the court constitutes a contempt. *Redman v. State*, 28 Ind. 205 (1867); *Dodge v. State*, 140 Ind. 284, 39 N.E. 745 (1895).

The prosecution of a fictitious suit is a contempt. *Smith v. Junction R.R.*, 29 Ind. 546 (1868).

Direct contempts are acts committed in the presence of the court, or near thereto, and which interrupt the proceedings of the court. *Whittem v. State*, 36 Ind. 196 (1871); *Ex parte Wright*, 65 Ind. 504 (1879); *Holman v. State*, 105 Ind. 513, 5 N.E. 556 (1886); *Stewart v. State*, 140 Ind. 7, 39 N.E. 508 (1895); *Dodge v. State*, 140 Ind. 284, 39 N.E. 745 (1895); *Snyder v. State*, 151 Ind. 553, 52 N.E. 152 (1898).

Filing scurrilous pleadings containing scandalous charges against the judge constitutes direct contempt. *Kerr v. State*, 194 Ind. 147, 141 N.E. 308 (1923).

Imprisonment.

Punishment by imprisonment for contempt cannot exceed three months. *Stewart v. State*, 140 Ind. 7, 39 N.E. 508 (1895).

Imprisonment for contempt in refusing to obey an order of court to pay money is not imprisonment for debt. *Stonehill v. Stonehill*, 146 Ind. 445, 45 N.E. 600 (1896).

Females may be imprisoned for contempt when they refuse to obey orders of courts. *Joyce v. Everson*, 161 Ind. 440, 69 N.E. 135 (1903).

Indirect Contempts.

Indirect contempts are acts committed without the presence of the court and which tend to obstruct the due administration of justice. *Whittem v. State*, 36 Ind. 196 (1871); *Ex parte Wright*, 65 Ind. 504 (1879); *Stewart v. State*, 140 Ind. 7, 39 N.E. 508 (1895).

Publications in newspapers can constitute contempts. *Worland v. State*, 82 Ind. 49 (1882); *Cheadle v. State*, 110 Ind. 301, 11 N.E.

Indirect Contempts. (Cont'd)

426, 59 Am. R. 199 (1887); *Fishback v. State*, 131 Ind. 304, 30 N.E. 1088 (1892); *Ray v. State*, 186 Ind. 396, 114 N.E. 866 (1917); *Zuver v. State*, 188 Ind. 60, 121 N.E. 828 (1919); *Kilgallen v. State*, 192 Ind. 531, 132 N.E. 682, 137 N.E. 178 (1921).

An attempt to create the belief that a juror or officer of court may be bribed may be a contempt. *Little v. State*, 90 Ind. 338, 46 Am. R. 224 (1883).

Refusing to surrender possession of lands in obedience to a writ of possession is a contempt. *Hawkins v. State*, 125 Ind. 570, 25 N.E. 818 (1890).

To constitute a contempt there must be an act coupled with an intended disrespect to or defiance of the court. *Fishback v. State*, 131 Ind. 304, 30 N.E. 1088 (1892); *Stewart v. State*, 140 Ind. 7, 39 N.E. 508 (1895); *Shirk v. Cox*, 141 Ind. 301, 40 N.E. 750 (1895); *Ray v. State*, 186 Ind. 396, 114 N.E. 866 (1917).

Injunction.

Violating orders of injunction constitutes a contempt. *Hawkins v. State*, 126 Ind. 294, 26 N.E. 43 (1890); *Shirk v. Cox*, 141 Ind. 301, 40 N.E. 750 (1895); *Thistlethwaite v. State*, 149 Ind. 319, 49 N.E. 156 (1898); *Ramer v. State*, 190 Ind. 124, 128 N.E. 440 (1920); *Kissel v. Lewis*, 27 Ind. App. 302, 61 N.E. 209 (1901).

Persons violating injunctions issued to enforce civil rights are not entitled to a discharge on filing answers purging themselves of contempt. *Thistlethwaite v. State*, 149 Ind. 319, 49 N.E. 156 (1898).

Officer's Refusal to Act.

Refusal of the clerk of the court to pay out money in his hands is not a contempt. *Swift v. State ex rel. Clark*, 63 Ind. 81 (1878).

Refusal of officer to serve process before payment of his fees may constitute a con-

tempt. *McFarlan v. State*, 149 Ind. 149, 48 N.E. 625 (1897).

A county clerk could not be held in contempt for failing to obey the order of a court to issue a marriage license where the court lacked subject matter jurisdiction to issue the order because the applicant was under age. *State ex rel. Leffingwell v. Superior Court No. 2*, 262 Ind. 574, 321 N.E.2d 568, 45 Ind. Dec. 326 (1974).

Review on Appeal.

An appeal lies from the judgment in proceedings for contempt, but does not stay the execution of the punishment. *Whittem v. State*, 36 Ind. 196 (1871); *Worland v. State*, 82 Ind. 49 (1882); *McKinney v. Frankfort & State Line Co.*, 140 Ind. 95, 38 N.E. 170 (1894).

The practice on an appeal in proceedings for constructive contempts is the same as in civil actions. *Beck v. State*, 72 Ind. 250 (1880).

In cases of direct contempt, the Supreme Court on appeal will accept as true the statement of record of the lower court as the facts in the case. *Holman v. State*, 105 Ind. 513, 5 N.E. 556 (1886).

The state may appeal if a proceeding for an indirect contempt is dismissed. *State v. Rockwood*, 159 Ind. 94, 64 N.E. 592 (1902).

Subpoena.

Inducing another to be absent so a subpoena cannot be served, when the act is done before the subpoena is issued, is not a contempt. *McConnell v. State*, 46 Ind. 298 (1874).

To purposely prevent the service of a subpoena, after notice of its issue, is a contempt. *Haskett v. State*, 51 Ind. 176 (1875).

Refusal to obey a subpoena, after service, is a contempt. *Wilson v. State*, 57 Ind. 71 (1877); *Baldwin v. State*, 126 Ind. 24, 25 N.E. 820 (1890).

Collateral References. State court's power to order indefinite coercive fine or imprisonment to exact promise of future compli-

ance with court's order — anticipatory contempt. 81 A.L.R.4th 1008.

33-4-2-9. Recognizances — Judges make take. — The judges of such circuit courts, within their respective districts, shall take all necessary recognizances to keep the peace, or to answer any criminal charge, or offense, in the court having jurisdiction. [2 R.S. 1852, ch. 4, § 15, p. 5.]

Cross References. Bail in criminal actions, IC 35-33-8.5.

NOTES TO DECISIONS

Applicable to Judge Only.
This section does not apply to circuit courts, but to the judges thereof, and does not confer

on such courts original jurisdiction in proceedings for surety of the peace. *State v. Cooper*, 90 Ind. 575 (1883).

33-4-2-10. Failure of judge to attend — No discontinuance. — There shall be no discontinuance of any suit, process, matter, or proceeding whatever returnable to, or pending in any circuit court, by reason of a failure of the judge to attend on the first or any other day of the term. [2 R.S. 1852, ch. 4, § 16, p. 5.]

33-4-2-11. Elisor — Appointment. — If, at any time there shall be no sheriff nor coroner to attend, or if the sheriff and coroner shall both be incapacitated from serving, the board of county commissioners shall have power to appoint an elisor to serve during the pendency of the matter in which such officer may be disabled from serving. [2 R.S. 1852, ch. 4, § 20, p. 5; P.L.7-1983, § 35.]

NOTES TO DECISIONS

Bailiff Appointed Elisor.
A bailiff to a jury under the sheriff in other causes could have been appointed an elisor.

State ex rel. Lowry v. Bodly, 7 Blackf. 355 (1845).

33-4-2-12. Elisor — Duties. — Such elisor shall take the like oath and give the like bond and surety as are required of sheriffs, and shall have the same authority to perform all the duties of the sheriff which shall relate to the service for which he may be thus specially appointed, and shall be governed by the same rules, and be subject to the like penalties and liabilities. [2 R.S. 1852, ch. 4, § 21, p. 5.]

CHAPTER 3

STANDARD SMALL CLAIMS AND MISDEMEANOR DIVISION OF CIRCUIT COURT

SECTION.	SECTION.
33-4-3-1 — 33-4-3-4. [Repealed.]	33-4-3-11. Minor offenses and violations docket — Jurisdiction — Traffic violations bureau.
33-4-3-5. Applicability of chapter.	33-4-3-12. Evening sessions — Additional sessions.
33-4-3-6. Dockets.	33-4-3-13. Compliance with requests of executive director of state court administration.
33-4-3-7. Small claims docket — Jurisdiction.	
33-4-3-8. Small claims docket — Practice and procedure — Exceptions.	
33-4-3-9. Change of venue from county — Change of venue from judge.	
33-4-3-10. Trial by jury.	

33-4-3-1 — 33-4-3-4. [Repealed.]

Compiler's Notes. These sections, transferring jurisdiction from courts of common

pleas to circuit courts, were repealed by Acts 1981, P.L. 272, § 146 and P.L.167-1984, § 92.

33-4-3-5. Applicability of chapter. — This chapter applies to each circuit court for which this article provides a standard small claims and misdemeanor division. [P.L.167-1984, § 23.]

Res Gestae. Tort reform, Act No. 1741, 39 (No. 3) Res Gestae 24 (1995).

Valparaiso University Law Review. Private Judging: An Effective and Efficient Alter-

native to the Traditional Court System, 21 Val. U.L. Rev. 681 (1987).

Cited: State ex rel. Adams v. Hendricks Circuit Court, 497 N.E.2d 564 (Ind. 1986).

33-4-3-6. Dockets. — The small claims and misdemeanor division of the court has the following dockets:

- (1) A small claims docket.
- (2) A minor offenses and violations docket.

[P.L.167-1984, § 24.]

33-4-3-7. Small claims docket — Jurisdiction. — The small claims docket has jurisdiction over the following:

- (1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.
- (2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000). [P.L.167-1984, § 25; P.L.19-1986, § 50; P.L.301-1987, § 1.]

Collateral References. Small claims: jurisdictional limits as binding on appellate court. 67 A.L.R.4th 1117.

Small claims: jury trial rights in, and on appeal from, small claims court proceeding. 70 A.L.R.4th 1119.

33-4-3-8. Small claims docket — Practice and procedure — Exceptions. — (a) The exceptions provided in this section to formal practice and procedure apply to all cases on the small claims docket.

(b) A defendant is deemed to have complied with the statute and rule requiring the filing of an answer upon entering an appearance personally or by attorney. The appearance constitutes a general denial and preserves all defenses and compulsory counterclaims, which may then be presented at the trial of the cause.

(c) If, at the trial of the cause, the court determines:

- (1) That the complaint is so vague or ambiguous that the defendant was unable to determine the nature of plaintiffs' claim; or
- (2) That the plaintiff is surprised by a defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated;

the court shall grant a continuance.

(d) The trial shall be conducted informally, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. The trial is not bound by the statutes or rules governing

practice, procedure, pleadings, or evidence except for provisions relating to privileged communications and offers of compromise. [P.L.167-1984, § 26.]

33-4-3-9. Change of venue from county — Change of venue from judge. — There is no change of venue from the county as of right in cases on the small claims docket. However, a change of venue from the judge shall be granted as provided by statute and by rules of the Supreme Court of Indiana. [P.L.167-1984, § 27.]

33-4-3-10. Trial by jury. — (a) The filing of a claim on the small claims docket is deemed a waiver of trial by jury.

(b) The defendant may, not later than ten (10) days following service of the complaint in a small claims case, demand a trial by jury by filing an affidavit that:

- (1) states that there are questions of fact requiring a trial by jury;
- (2) specifies those questions of fact; and
- (3) states that the demand is in good faith.

(c) Notice of the defendant's right to a jury trial, and the ten (10) day period in which to file for a jury trial, shall be clearly stated on the notice of claim or on an additional sheet to be served with the notice of claim on the defendant.

(d) Upon the deposit of seventy dollars (\$70) in the small claims docket by the defendant, the court shall transfer the claim to the plenary docket. Upon transfer, the claim then loses its status as a small claim. [P.L.167-1984, § 28; P.L.209-1996, § 2; P.L.213-1996, § 1.]

Compiler's Notes. This section was separately amended by P.L.209-1996 and by P.L.213-1996, neither act referring to the

other. Because the amendments were identical, this section is set out only once.

33-4-3-11. Minor offenses and violations docket — Jurisdiction — Traffic violations bureau. — (a) The minor offenses and violations docket has jurisdiction over the following:

- (1) All Class D felony cases.
- (2) All misdemeanor cases.
- (3) All infraction cases.
- (4) All ordinance violation cases.

(b) The court shall establish a traffic violations bureau in the manner prescribed by IC 34-28-5-7 through IC 34-28-5-13. [P.L.167-1984, § 29; P.L.1-1998, § 173.]

33-4-3-12. Evening sessions — Additional sessions. — (a) The court shall provide by rule for an evening session to be held once each week.

(b) The court shall hold additional sessions in the evening and on holidays as necessary to insure the just, speedy, and inexpensive determination of every action. [P.L.167-1984, § 30.]

33-4-3-13. Compliance with requests of executive director of state court administration. — The court shall comply with all requests made

under IC 33-2.1-7-3 by the executive director of state court administration concerning the small claims and misdemeanor division. [P.L.167-1984, § 31.]

CHAPTER 4

CIRCUIT COURTS — JUDGES AND ORIGINAL EXCLUSIVE JURISDICTION

SECTION.

33-4-4-1. Election of judges.

33-4-4-2. Terms and style.

SECTION.

33-4-4-3. Jurisdiction.

33-4-4-1. Election of judges. — (a) A judge of the circuit court shall be elected under IC 3-10-2-11 by the voters of each circuit.

(b) In any circuit for which IC 33-4-1 provides more than one (1) judge of the circuit court, the county election board shall assign a number to each seat on the court. After that, any candidate for judge of the circuit court must file a declaration of candidacy under IC 3-8-2 or petition of nomination under IC 3-8-6 for one (1) specified seat of the court. Each seat on the court shall be listed separately on the election ballot in the form prescribed by IC 3-10-1-19 and IC 3-11-2. [Acts 1881 (Spec. Sess.), ch. 24, § 1, p. 102; 1972, P.L. 207, § 1; 1978, P.L. 139, § 1; P.L.5-1986, § 16; P.L.40-1990, § 6.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

NOTES TO DECISIONS

ANALYSIS

Election of judges.
Legislature's power to change circuits.
Term and authority of successor.

Election of Judges.

A complaint in a mandate proceeding which depends on the unconstitutionality of a statute providing for election of judges, which fails to allege that the statute has been adjudged unconstitutional in proceedings in which there were adverse parties having interest, is insufficient as against a demurrer. *State ex rel. Clifton v. Schortemeier*, 197 Ind. 669, 151 N.E. 613 (1926).

A circuit court has jurisdiction of the subject matter of appropriating land in the county under the power of eminent domain. *Sisters of Providence v. Lower Vein Coal Co.*, 198 Ind. 645, 154 N.E. 659 (1926), overruled on other grounds, *Joint County Park Bd. v. Stegemoller*, 198 Ind. 645, 89 N.E.2d 720 (1950).

There was no equity jurisdiction in a circuit court in the face of a statute specifically limiting the court's jurisdiction in an otherwise valid statutory proceeding. *State ex rel. Root v. Circuit Court*, 259 Ind. 500, 289 N.E.2d 503, 33 Ind. Dec. 637 (1972).

Legislature's Power to Change Circuits.

The legislature could create new circuits and could change old ones, but could not make such changes as would have the effect of depriving a circuit judge of his office and duties before the end of his term of office. *Carpenter v. State*, 72 Ind. 331 (1880); *State ex rel. Gibson v. Friedley*, 135 Ind. 119, 34 N.E. 872, 21 L.R.A. 634 (1893).

Term and Authority of Successor.

Where a circuit judge died before the expiration of his term, his successor appointed by the governor could serve only until the next general election when the successor could be elected. *State ex rel. Custer v. Schortemeier*, 197 Ind. 507, 151 N.E. 407 (1926).

33-4-4-2. Terms and style. — The circuit court shall be held in the respective counties at such times as may be fixed by law. Said court shall be

styled “_____ Circuit Court,” according to the name of the county in which it may be held. [Acts 1881 (Spec. Sess.), ch. 24, § 2, p. 102.]

Cross References. Term prolonged to finish trial, IC 33-1-2-1.

Terms of court, abolition of term time and vacation, calendar year, IC 33-1-6-1.

Terms of court shall not be recognized, Rule TR. 72.

NOTES TO DECISIONS

ANALYSIS

In general.

Incorrect designation of court.

Sessions at county seat.

In General.

Regular terms of circuits could only be held at the times fixed by law, and if the law fixed the beginning of a term in one county of a circuit before the term in another county had expired, the effect would be to shorten the term in the latter county. *Batten v. State*, 80 Ind. 394 (1881). (Sections IC 33-1-6-1 — 33-1-6-5 now make terms of court the calendar year and IC 33-1-6-2 provides that the judge will divide his time as the business of the courts in the circuit require.)

Incorrect Designation of Court.

Where complaint bore the caption “In the Circuit Court of Knox County, Indiana,” and not “Knox Circuit Court,” it was not in error, as the purpose of the designation of the court is to apprise the parties as to where they are to appear. *Ray v. State*, 252 Ind. 395, 248 N.E.2d 337, 18 Ind. Dec. 117 (1969).

Sessions at County Seat.

It has been so long and universally the custom to hold the sessions of the circuit courts at the respective county seats, that such custom has become equal to a positive law on the subject. *Board of Comm’rs v. Gwin*, 136 Ind. 562, 36 N.E. 237, 22 L.R.A. 402 (1894).

33-4-4-3. Jurisdiction. — (a) The circuit court has original jurisdiction in all civil cases and in all criminal cases, except where exclusive jurisdiction is conferred by law upon other courts of the same territorial jurisdiction.

(b) The circuit court also has such appellate jurisdiction as may be conferred by law upon it. [Acts 1881 (Spec. Sess.), ch. 24, § 3, p. 102; P.L.167-1984, § 32; P.L.1-1990, § 317.]

Cross References. City courts, original concurrent misdemeanor and infraction jurisdiction, IC 33-10.1-2-2.

Civil cases, original concurrent jurisdiction of city courts in certain cases, IC 33-10.1-2-3.1 — IC 33-10.1-2-5.

Constitutional provision as to jurisdiction of circuit courts, *Indiana Const.*, art. 7, § 8.

Injunctions and restraining orders, who may grant, IC 34-26-1.

Nonresident, wrongful death, appointment of administrator to bring action for damages, IC 29-1-10-18.

Superior courts, circuit judge authorized to preside in, IC 33-5-5.1-27.

Town courts, original concurrent misdemeanor and infraction jurisdiction, IC 33-10.1-2-7.

Transfer of cases from circuit court to superior court, IC 33-5-4-2.

Transfer of cases to circuit court from superior court, IC 33-5-4-1, IC 33-5-4-3.

Cited: *Bauer v. Biel*, 132 Ind. App. 224, 177 N.E.2d 269 (1961); *Plummer’s Estate v. Kaag*, 141 Ind. App. 142, 9 Ind. Dec. 137, 219 N.E.2d 917 (1966); *Pund v. Pund*, 171 Ind. App. 347, 55 Ind. Dec. 415, 357 N.E.2d 257 (1976); *Thrasher v. Van Buren Tp.*, 182 Ind. App. 121, 71 Ind. Dec. 455, 394 N.E.2d 215 (1979); *Laskowski v. Mears*, 600 F. Supp. 1568 (N.D. Ind. 1985); *State ex rel. Adams v. Hendricks Circuit Court*, 497 N.E.2d 546 (Ind. 1986); *Chemco Transp., Inc. v. Conn*, 506 N.E.2d 1111 (Ind. App. 1987).

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In General.

One circuit court cannot control the process nor modify the proceedings of another circuit court. *Indiana & I.R.R. v. Williams*, 22 Ind. 198 (1864); *Macy v. Lloyd*, 23 Ind. 60 (1864); *Gregory v. Perdue*, 29 Ind. 66 (1867); *Plunkett v. Black*, 117 Ind. 14, 19 N.E. 537 (1889); *Board of County Comm'rs v. Stout*, 136 Ind. 53, 35 N.E. 683, 22 L.R.A. 398 (1893); *Scott v. Runner*, 146 Ind. 12, 44 N.E. 755, 58 Am. St. R. 345 (1896); *Gillie v. Fleming*, 191 Ind. 444, 133 N.E. 737 (1922); *Traders' Loan & Inv. Co. v. Houchins*, 195 Ind. 256, 144 N.E. 879 (1924); *Shideler v. Vrljich*, 195 Ind. 563, 145 N.E. 881 (1925).

Circuit courts are courts of superior and general jurisdiction in both law and equity cases. *Barkley v. Tapp*, 87 Ind. 25 (1882); *Board of Comm'rs v. Gwin*, 136 Ind. 562, 36 N.E. 237, 22 L.R.A. 402 (1894); *Coddington v. Canaday*, 157 Ind. 243, 61 N.E. 567 (1901).

Presumptions in favor of courts of general jurisdiction. *Nichols v. State*, 127 Ind. 406, 26 N.E. 839 (1891); *Shoemaker v. South Bend Spark Arrester Co.*, 135 Ind. 471, 35 N.E. 280, 22 L.R.A. 332 (1893); *Davis v. Taylor*, 140 Ind. 439, 39 N.E. 551 (1895); *Clayborn v. Tompkins*, 141 Ind. 19, 40 N.E. 121 (1895); *Bailey v. Rinker*, 146 Ind. 129, 45 N.E. 38 (1896); *Long v. Ruch*, 148 Ind. 74, 47 N.E. 156 (1897); *Boyer v. Robertson*, 149 Ind. 74, 48 N.E. 7 (1897); *Runner v. Scott*, 150 Ind. 441, 50 N.E. 479 (1898).

Jurisdiction over the subject matter cannot be conferred on the court by consent of the

parties. *Tucker v. Sellers*, 130 Ind. 514, 30 N.E. 531 (1892); *Ridge v. City of Crawfordsville*, 4 Ind. App. 513, 31 N.E. 207 (1892); *Huber v. Beck*, 6 Ind. App. 47, 32 N.E. 1025 (1893).

Every circuit court in the state has original jurisdiction in all cases at law and in equity. *Royal Ins. Co. v. Stewart*, 190 Ind. 444, 129 N.E. 853 (1921).

A writ of prohibition will be issued by the Supreme Court to restrain a circuit or superior court from acting outside of its equitable jurisdiction by issuing an injunction to control matters purely political, notwithstanding the fact that such court is a court of law as well as a court of equity. *State ex rel. Coffin v. Superior Court*, 196 Ind. 614, 149 N.E. 174 (1925).

Under our statute a county circuit court had no jurisdiction to decide whether or not the superior court of another county was guilty of error or abuse of discretion, or to proceed in a habeas corpus proceeding after it appeared that petitioner was held in custody under final process issued out of a court of coordinate jurisdiction. *Haden v. Dowd*, 216 Ind. 281, 23 N.E.2d 676 (1939), cert. denied, 309 U.S. 662, 60 S. Ct. 583, 84 L. Ed. 1009 (1940).

The law of Indiana fixing the jurisdiction of circuit courts invests them with complete jurisdiction to try actions instituted under the Federal Emergency Price Control Act of 1942, which gives state courts concurrent jurisdiction with the federal courts to try actions involving infractions of maximum price regulations fixed by the Office of Price Administration pursuant to the authority granted by such act. *Bowles v. Heckman*, 224 Ind. 46, 64 N.E.2d 660 (1946).

The circuit court is a constitutional court, whereas the superior court is a statutory court established by the general assembly under its authority to provide "such other courts." *State ex rel. Gary Taxpayers' Ass'n v. Lake Superior Court*, 225 Ind. 478, 76 N.E.2d 254 (1947).

It has been uniformly held that a court which has jurisdiction of the subject matter of an action, and which has obtained jurisdiction of the parties, has power to hear and determine such action. *State ex rel. Public Serv. Comm'n v. Circuit Court*, 230 Ind. 277, 100 N.E.2d 888 (1951).

The circuit court had jurisdiction of cross-complaint for personal injuries caused by decedent filed in action for wrongful death. *State ex rel. Raney v. Gibson Circuit Court*, 241 Ind. 497, 173 N.E.2d 660 (1961).

Adequacy of Jurisdiction.

Where assault and abduction occurred in Indiana and were integrally related to vic-

Adequacy of Jurisdiction. (Cont'd)

tim's murder in Ohio, the assault and abduction provided an adequate jurisdictional base for defendant's conviction of murder in Indiana. *Conrad v. State*, 262 Ind. 446, 317 N.E.2d 789, 44 Ind. Dec. 233 (1974).

The trial court properly had jurisdiction over the state and over the driver of the vehicle involved where the dispute arose due to an automobile accident, even where the Comparative Fault Act would apply to the driver while the Tort Claims Act would apply to the state, the court could properly preside over a single action based on the underlying negligence action since the difference lay only in the defense which were available to the defendants and in the type of instructions later given to the jury. *State v. Schuetter*, 503 N.E.2d 418 (Ind. App. 1987).

Adoption Proceedings.

In Lake County, the circuit court and superior court have concurrent jurisdiction over probate matters. The superior court of Lake County is divided into four divisions, civil (including probate), criminal, county, and juvenile. The juvenile division does not have jurisdiction in probate matters, and thus cannot assert jurisdiction in an adoption proceeding. Either the civil division of the superior court or the circuit court could hear an adoption matter. As a result, the Lake County Circuit Court properly exercised its jurisdiction when hearing a petition to revoke an adoption. *Lake County Div. of Family & Children Servs. v. T.B.*, 622 N.E.2d 921 (Ind. 1993).

Appellate Jurisdiction.

When appeals are authorized from inferior tribunals, and no express direction is given as to the court to which the appeal lies, the circuit court has jurisdiction. *Hamilton v. City of Fort Wayne*, 73 Ind. 1 (1880).

The general assembly had power to divest the circuit court of original exclusive jurisdiction to hear appeals from the state board of tax commissioners and authorize the removal of such appeals to the Appellate Court. *Beautygard Mfg. Co. v. Geeslin*, 148 Ind. App. 340, 266 N.E.2d 61, 24 Ind. Dec. 392 (1971).

Bank Receiverships.

A circuit court which had assumed jurisdiction to appoint a receiver for an insolvent bank and trust company to settle the affairs of the bank and trust company had jurisdiction to administer the full affairs thereof and the adjustment of all rights of parties in interest, without interference by any other court, including the probate court. *Hack v. Bolint*, 101 Ind. App. 133, 191 N.E. 177 (1934).

Criminal Cases.**—Juveniles.**

Juvenile court has exclusive original juris-

diction over the prosecution of a 16-year-old for attempted robbery, although the case may subsequently be waived to adult court under the terms of the Indiana Juvenile Code. *State ex rel. Camden v. Gibson Circuit Court*, 640 N.E.2d 696 (Ind. 1994).

Judicial Immunity.

Since a circuit court judge had jurisdiction under this section to consider a parent's petition for the sterilization of her daughter, he was immune from suit subsequently filed by the daughter seeking damages for violation of her constitutional rights. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, reh'g denied, 436 U.S. 951, 98 S. Ct. 2862, 56 L. Ed. 2d 795 (1978).

A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, reh'g denied, 436 U.S. 951, 98 S. Ct. 2862, 56 L. Ed. 2d 795 (1978).

Circuit court judge was judicially immune from civil liability for false imprisonment for finding the plaintiff in contempt during a hearing on visitation following a dissolution of marriage where the judge had subject matter jurisdiction, the plaintiff was present in court when the orders were issued and the judge had personal jurisdiction of the plaintiff even though he was not a party to the action. The plaintiff, the present husband of a woman involved in a visitation dispute with her former husband, had been personally ordered not to interfere with the visitation rights. *Owen v. Vaughn*, 479 N.E.2d 83 (Ind. App. 1985).

Lateral Railroad Construction.

It is the circuit court and not the public service commission that has jurisdiction to rule on a petition for construction of a lateral railroad across highways and roads by a private corporation pursuant to IC 8-4-10-1. *Baker v. American Metal Climax, Inc.*, 168 Ind. App. 445, 344 N.E.2d 73, 51 Ind. Dec. 621 (1976).

Miscellaneous Jurisdiction.

There was no equity jurisdiction in a circuit court in the face of a statute specifically limiting the court's jurisdiction in an otherwise valid statutory proceeding. *State ex rel. Root v. Circuit Court*, 259 Ind. 500, 289 N.E.2d 503, 133 Ind. Dec. 637 (1972).

—Distribution of Fund.

A court's distribution of the remaining balance of an employee assistance plan for unemployed workers was within the general

Miscellaneous Jurisdiction. (Cont'd)**—Distribution of Fund.** (Cont'd)

jurisdiction of the court under this section. *Anderson v. Wolford*, 604 N.E.2d 659 (Ind. App. 1992).

—Eminent Domain.

A circuit court has jurisdiction of an eminent domain proceeding to appropriate land in the county. *Sisters of Providence v. Lower Vein Coal Co.*, 198 Ind. 645, 154 N.E. 659 (1926), overruled on other grounds, *Joint County Park Bd. v. Stegemoller*, 198 Ind. 645, 89 N.E.2d 720 (1950).

—Injunction.

The Marion Circuit Court had jurisdiction of a suit to enjoin the secretary of state from publishing and distributing copies of a purported House Bill No. 6, on the ground that it had never passed the general assembly. *State ex rel. Mayr v. Marion Circuit Court*, 202 Ind. 501, 176 N.E. 626 (1931).

—Landlord and Tenant.

Circuit courts had jurisdiction of actions by landlords to recover possession of lands from tenants. *Poffenberger v. Blackstone*, 57 Ind. 288 (1877).

—Municipal Ordinance.

An action may have been brought in the circuit court to recover a penalty for the violation of a town ordinance. *Town of Brookville v. Gagle*, 73 Ind. 117 (1880).

—Trusts and Wills.

A circuit court had jurisdiction in a suit to determine the effect of a will and a declaration of trust, and the validity of an agreement between the parties in the relation to the trust. *Spencer v. Spencer*, 31 Ind. App. 321, 67 N.E. 1018, 99 Am. St. R. 260 (1903).

Nature of Powers.

Courts, as such, can only exercise judicial powers. *Ex parte Griffiths*, 118 Ind. 83, 20 N.E. 513, 3 L.R.A. 398, 10 Am. St. R. 107 (1889); *Arnett v. State ex rel. Donohue*, 168 Ind. 180, 80 N.E. 153, 8 L.R.A. (n.s.) 1192 (1902); *Chicago, I. & L. Ry. v. Railroad Comm'n*, 38 Ind. App. 439, 78 N.E. 338 (1906).

Courts of general jurisdiction have such incidental powers as may be necessary to properly discharge their judicial functions. *Board of County Comm'rs v. Stout*, 136 Ind. 53, 35 N.E. 683, 22 L.R.A. 398 (1893); *Board of Comm'rs v. Gwin*, 136 Ind. 562, 36 N.E. 237, 22 L.R.A. 402 (1894).

Powers which are not strictly judicial may be conferred by law on judges of courts. *City of Terre Haute v. Evansville & T.H.R.R.*, 149 Ind. 174, 46 N.E. 77, 37 L.R.A. 189 (1897);

Wilkison v. Board of Children's Guardians, 158 Ind. 1, 62 N.E. 481 (1902); *Bemis v. Guirl Drainage Co.*, 182 Ind. 36, 105 N.E. 496 (1914); *Board of Fin. v. First Nat'l Bank*, 71 Ind. App. 290, 124 N.E. 768 (1919).

Negligence.

An Indiana circuit court has original subject matter jurisdiction to hear a claim sounding in negligence. *South E. Ind. Natural Gas Co. v. Ingram*, 617 N.E.2d 943 (Ind. App. 1993).

Nuisances, Abatement.

Where the subject matters of the complaint were a suit to abate a nuisance and a suit for a declaratory judgment, the circuit court had subject matter jurisdiction. *Brendanwood Neighborhood Ass'n v. Common Council*, 167 Ind. App. 253, 338 N.E.2d 695, 50 Ind. Dec. 192 (1975).

Objections to Jurisdiction.

Objections to jurisdiction over the subject matter may be raised at any stage of the proceedings by any party, or by the court of its own motion. *McCoy v. Able*, 131 Ind. 417, 30 N.E. 528 (1892); *Partlow v. State*, 194 Ind. 172, 141 N.E. 513, 30 A.L.R. 1414 (1923), overruled on other grounds, *Stephenson v. State*, 205 Ind. 194, 186 N.E.293 (1933); *Huber v. Beck*, 6 Ind. App. 47, 32 N.E. 1025 (1893); *Debs v. Dalton*, 7 Ind. App. 84, 34 N.E. 236 (1893).

Where a case in superior court, in which a motion for judgment *nunc pro tunc* was pending, was transferred by consent to the circuit court, the moving parties were thereafter estopped to question the circuit court's jurisdiction, and could not have the case retransferred. *Willard v. Loucks*, 97 Ind. App. 131, 175 N.E. 256 (1931).

Where an order for litigation expenses and attorney's fees was entered against the plaintiff 149 days after the entry of a final divorce decree for the defendant, the plaintiff's motion to correct errors was not sufficiently specific to present the jurisdictional issue as the expiration of the time during which the court can amend a judgment does not deprive the court of subject matter jurisdiction and the question as to whether there was jurisdiction over a particular case was waived when not timely raised. *Farley v. Farley*, 157 Ind. App. 385, 300 N.E.2d 375, 38 Ind. Dec. 257 (1973).

Probate Jurisdiction.

Since the abolition of the common pleas courts, the circuit courts have had exclusive probate jurisdiction except where such jurisdiction has been conferred on superior and probate courts. *Heaton v. Knowlton*, 65 Ind. 255 (1879); *Hillenberg v. Bennett*, 88 Ind. 540

Probate Jurisdiction. (Cont'd)

(1883); *Marchant v. Olson*, 184 Ind. 17, 110 N.E. 200 (1915).

Under this section and IC 29-2-1-1, IC 29-1-7-4 and IC 29-1-7-13, the circuit court of a county has exclusive jurisdiction in the contest of a will, where it admitted the will to probate, and the superior court of the county has no jurisdiction of a suit contesting such will. *Marchant v. Olson*, 184 Ind. 17, 110 N.E. 200 (1915).

Since sole jurisdiction in adoption matters was bestowed by law upon the Marion Probate Court without providing any change in procedure therefor, the procedure is the same as in the circuit courts and is governed by the adoption statute. *State ex rel. Bradshaw v. Probate Court*, 225 Ind. 268, 73 N.E.2d 769 (1947).

The Marion Probate Court, established by statute, has original and exclusive jurisdiction as to certain specified matters, including adoption, and concurrent jurisdiction as to certain other specified matters, all of which, prior to its establishment, were within the sole jurisdiction of the circuit court. *State ex rel. Bradshaw v. Probate Court*, 225 Ind. 268, 73 N.E.2d 769 (1947).

As a court of general jurisdiction, a circuit court has jurisdiction of the subject matter in a petition to determine heirship. *Sutherland's Estate v. Sutherland*, 246 Ind. 234, 204 N.E.2d 520, 4 Ind. Dec. 579 (1965).

Sterilization.

A circuit court judge has jurisdiction under

this section to consider a parent's petition for the sterilization of her daughter. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, reh'g denied, 436 U.S. 951, 98 S. Ct. 2862, 56 L. Ed. 2d 795 (1978).

The fact that former IC 16-13-13-1 through IC 16-13-13-4 provided statutory authority for the sterilization of institutionalized persons in the custody of the state did not warrant the inference that a court of general jurisdiction had no power to act on a petition for sterilization of a minor in the custody of her parent, particularly where the parent had authority under former IC 16-8-4-2 to consent to and contract for medical or hospital care or treatment of the minor including surgery. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331, reh'g denied, 436 U.S. 951, 98 S. Ct. 2862, 56 L. Ed. 2d 795 (1978).

Subject-Matter Jurisdiction.

Where trial court found that matter being sued upon was an oral contract it had subject-matter jurisdiction. *Suyemasa v. Myers*, 420 N.E.2d 1334 (Ind. App. 1981).

Tax Cases.

Taxpayers must invoke administrative remedies to bring challenges to the constitutionality of a tax administered by the department of state revenue, and once those remedies have been pursued judicial review may be sought only in the tax court and not courts of general jurisdiction. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).

Collateral References. Necessity of notice of application or intention to correct error in judgment entry. 14 A.L.R.2d 224.

CHAPTER 5

JURY COMMISSIONERS OF CIRCUIT COURTS

SECTION.

33-4-5-1. Oath — Instructions.

33-4-5-2. Selection of grand and petit jurors — Special procedure in Marion County.

33-4-5-3. Special venire — New names.

33-4-5-4. Clerk to keep box locked.

33-4-5-5. Who ineligible — Failure to act — Contempt of court.

SECTION.

33-4-5-6. Vacancy — Appointment — Qualifications.

33-4-5-7. Qualifications of jurors — Service.

33-4-5-8. [Repealed.]

33-4-5-9. Selection of jurors.

33-4-5-10. [Repealed.]

33-4-5-11. Inapplicability of chapter to certain counties.

33-4-5-1. Oath — Instructions. — The circuit court shall, during the month of November, appoint for the next calendar year two (2) persons, at least one (1) of whom shall be a resident of the town or city in which the court shall be held, as jury commissioners, who shall be freeholders and voters of the county, well known to be of opposite politics, and of good

character for intelligence, morality and integrity, and cause them to appear and take an oath or affirmation in open court, to be entered of record in the order-book of the court in the following form: "You do solemnly swear (or affirm) that you will honestly, and without favor or prejudice, perform the duties of jury commissioners during your term of office, that, in selecting persons to be drawn as jurors, you will select none but persons whom you believe to be of good repute for intelligence and honesty, that you will select none whom you have been or may be requested to select, and that, in all of your selections, you will endeavor to promote only the impartial administration of justice." The court shall thereupon instruct them concerning their duties. [Acts 1881 (Spec. Sess.), ch. 69, § 1, p. 557; 1899, ch. 195, § 1, p. 428; 1967, ch. 140, § 1.]

Compiler's Notes. IC 33-4-5-11 makes this chapter inapplicable to counties having populations of not less than 400,000 and not more than 700,000. According to the 1990

federal decennial census, Lake County is the only county fitting that description.

Cited: *Shack v. State*, 259 Ind. 450, 33 Ind. Dec. 222, 288 N.E.2d 155 (1972).

NOTES TO DECISIONS

ANALYSIS

In general.

Appointment.

—Substantial compliance.

Delay in acting.

Discrimination.

Drawing grand jury.

Failure to enter in order book.

Qualifications.

—Collateral attack.

In General.

Jury commissioners are public officers and the law concerning de facto officers applies to their official acts. *State v. Sutherland*, 165 Ind. 339, 75 N.E. 642 (1905).

The provisions of this section do not prevent both of the jury commissioners from being appointed from the same city wherein the court is being held. *Dale v. State*, 200 Ind. 408, 164 N.E. 260 (1928).

This section requires that jury commissioners shall select jurors whom they believe to be of good repute and honest, and that they will not exclude any person or class which they may have been requested to exclude, but that the commissioners' judgment shall control. *Walter v. State*, 208 Ind. 231, 195 N.E. 268, 98 A.L.R. 607 (1935).

A jury is unlawful if not organized as required by this section; and, in support of a challenge, it is not necessary to show that the members are not qualified. *Walter v. State*, 208 Ind. 231, 195 N.E. 268, 98 A.L.R. 607 (1935).

Where a defendant was entitled to a jury trial, and in drawing the jury the commissioners excluded women from service as jurors, the court improperly overruled defendant's

challenge to the array, and the Supreme Court will presume that accused was prejudiced thereby, in view of this section and IC 33-4-5-2. *Walter v. State*, 208 Ind. 231, 195 N.E. 268, 98 A.L.R. 607 (1935).

Jury commissioners, who did not take oath to support federal and state constitutions before entering upon their duties were de facto, if not de jure, officers; and their authority to act was not subject to collateral attack. *Steinbarger v. State*, 214 Ind. 36, 14 N.E.2d 533 (1938).

The appointment of jury commissioners and their method of qualifying, including their oath, being matters of public record in the proceedings in the trial court, defendant was charged with knowledge thereof, and the method of saving questions relating thereto was by plea in abatement. *Steinbarger v. State*, 214 Ind. 36, 14 N.E.2d 533 (1938). (Plea in abatement abolished by Rule TR. 7(C).)

Since the office of jury commissioners is statutory and not constitutional, the oath prescribed by statute to be taken by jury commissioners before entering upon the duties of such office is sufficient, although it does not make provision that the oath administered to the jury commissioners shall include a promise to support both the federal and the state constitutions, since the provision of Const., art. 15, § 4, does not apply in such cases. *Foreman v. State*, 214 Ind. 79, 14 N.E.2d 546 (1938).

Neither the jury commissioners, nor grand jurors or petit jurors, are required to state on oath that they will support the Constitution of the United States. *Swain v. State*, 215 Ind. 259, 18 N.E.2d 921 (1939), cert. denied, 306 U.S. 660, 59 S. Ct. 791, 83 L. Ed. 1057 (1940).

Appointment.

—Substantial Compliance.

Technical defects in appointment of jury commissioners will not be grounds for disturbance of conviction where there has otherwise been substantial compliance with statutes directing selection of jurors. *Hasselbring v. State*, 441 N.E.2d 514 (Ind. App. 1982).

Defendant's contention that jury commissioner's failure to meet residency requirements rendered jury selection for her manslaughter trial improper was not valid where appointment of jury commissioner was in good faith, jury commissioner was properly inducted into office, and defendant did not contend that manner in which jury commissioner carried out his duties deprived her of an impartial jury. *Hasselbring v. State*, 441 N.E.2d 514 (Ind. App. 1982).

Delay in Acting.

Where jury commissioners were appointed December 15, but did not meet to select and deposit names in the jury list box until the 10th of the following January, they did not, by their delay in thus acting, exceed their authority, there being nothing in the statutes to nullify the acts of the jury commissioners because of such delay. *Koby v. State*, 209 Ind. 91, 198 N.E. 88 (1935).

The act of jury commissioners in selecting names for the jury box from the tax list for the current year of the date of selection, but not the year in which they were appointed commissioners by the court, was a substantial compliance with the statute, although the commissioners did not act as promptly as the statute contemplates, this being a mere irregularity which did not prejudice the rights of the defendant, in view of this section and IC 33-4-5-2. *Koby v. State*, 209 Ind. 91, 198 N.E. 88 (1935).

Discrimination.

In determining whether there has been an arbitrary discrimination against a Negro defendant in the selection of juries, too much significance to abstract mathematical ratios, or to the so-called law of recurrences, in the drawing of jurors, should not be attached, in view of IC 33-4-5-2; Ind. Const., art. 1, § 13; and U.S. Const., Amend. 14. *Swain v. State*, 215 Ind. 259, 18 N.E.2d 921 (1939), cert. denied, 306 U.S. 660, 59 S. Ct. 791, 83 L. Ed. 1057 (1940).

Where it is alleged in a challenge to the array of prospective petit jurors by a Negro defendant charged with murder that there were from 10,000 to 20,000 white persons in a county qualified for jury service and over

2,000 Negroes therein so qualified, but over a period of years no Negroes were drawn for jury service and were arbitrarily excluded solely upon the fact of their race or color, and, in the hearing of the issues raised by the challenge, the evidence disclosed that no Negro was ever drawn for jury service, and the state contended that such fact was merely coincidental or for no particular reason, the action of that court in overruling the challenge deprived defendant of his liberty without due process of law and denied him the equal protection of the law. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

No question of the guilt or innocence of an accused could be presented in the trial of issues raised by his challenge to the array of prospective petit jurors on the ground that Negroes were arbitrarily excluded therefrom, since his guilt or innocence could not affect his constitutional right to due process and equal protection of the law. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

When a claim is properly and timely asserted that a citizen whose life is at stake has been denied the equal protection of his country's laws on account of his race, it becomes the duty of the Supreme Court to make inquiry and determination of the facts presented in support of the claim, for equal protection to all is the basic principle upon which justice under law rests. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

Drawing Grand Jury.

Objection to the manner of drawing the jury, made for the first time on motion for a new trial, comes too late, where accused might have discovered irregularities by an examination of the record in the clerk's office at any time, in view of this section and IC 33-4-5-2. *Fenwick v. State*, 197 Ind. 572, 150 N.E. 764 (1926).

Failure to Enter in Order Book.

Fact that the appointments and oaths of the jury commissioners who selected the names from which the grand jury was to be drawn did not appear in the court's order book did not present a ground for reversal for person convicted under indictment found by grand jury. *Bagnell v. State*, 413 N.E.2d 1072 (Ind. App. 1980).

Qualifications.

—Collateral Attack.

Qualifications of jury commissioner cannot be collaterally attacked. *Hasselbring v. State*, 441 N.E.2d 514 (Ind. App. 1982).

33-4-5-2. Selection of grand and petit jurors — Special procedure in Marion County. — (a) The commissioners shall immediately, from the names of legal voters and citizens of the United States on the latest tax duplicate and the tax schedules of the county, examine for the purpose of determining the sex, age, and identity of prospective jurors, and proceed to select and deposit, in a box furnished by the clerk for that purpose, the names, written on separate slips of paper of uniform shape, size, and color, of twice as many persons as will be required by law for grand and petit jurors in the courts of the county, for all the terms of such courts, to commence with the calendar year next ensuing. Each selection shall be made as nearly as possible in proportion to the population of each county commissioner's district. In making such selections, they shall in all things observe their oath, and they shall not select the name of any person who is to them known to be interested in or has cause pending which may be tried by a jury to be drawn from the names so selected. They shall deliver the box, locked, to the clerk of the circuit court, after having deposited therein the names as herein directed. The key shall be retained by one (1) of the commissioners, not an adherent of the same political party as is the clerk.

(b) In a county containing a consolidated city, the commissioners may, upon an order made by the judge of the circuit court and entered in the records of the circuit court of the county, make such selections and such deposits monthly instead of annually and may omit the personal examination of prospective jurors, the examination of voters lists, and make selection without reference to commissioners' districts. The judge of the circuit court in any such county containing a consolidated city may appoint a secretary for the jury commissioners, and sufficient stenographic aid and clerical help to properly perform the duties of the commissioners and may fix the salaries of the commissioners, the secretary, and stenographic and clerical employees, and may also provide office quarters and necessary supplies therefor, all of which shall be paid for from the treasury of the county upon the order of the court.

(c) Subject to appropriations made by the county fiscal body, the jury commissioners may utilize a computerized jury selection system. However, the system utilized for the selection system must be fair and may not violate the rights of persons with respect to the impartial and random selection of prospective jurors. The jurors selected under the computerized jury selection system must be eligible for selection under this chapter. The commissioners shall deliver the names of the individuals selected to the clerk of the circuit court. The commissioners shall observe their oath in all activities taken under this subsection.

(d) The jury commissioners may supplement voter registration lists and tax schedules under subsection (a) with names from lists of persons residing in the county that the jury commissioners may designate as necessary to obtain a cross section of the population of each county commissioner's district. The lists designated by the jury commissioners under this subsection must be used for the selection of jurors throughout the entire county.

(e) The supplemental sources designated under subsection (d) may consist of such lists as those of utility customers, persons filing income tax

returns, motor vehicle registrations, city directories, telephone directories, and driver's licenses. These supplemental lists may not be substituted for the voter registration list. The jury commissioners may not draw more names from supplemental sources than are drawn from the voter registration lists and tax schedules. [Acts 1881 (Spec. Sess.), ch. 69, § 2, p. 557; 1939, ch. 132, § 1, p. 656; 1947, ch. 15, § 1; 1959, ch. 132, § 1; 1961, ch. 254, § 1; P.L.300-1983, § 2; P.L.282-1989, § 1; P.L.12-1992, § 122.]

Compiler's Notes. According to the 1990 federal census, IC 36-3-1, and IC 36-4-1-1, the county containing the consolidated city is Marion.

Res Gestae. Criminal justice notes, 38 (No. 11) Res Gestae 45 (1995).

Cited: *Morris v. State*, 266 Ind. 473, 58 Ind. Dec. 207, 364 N.E.2d 132 (1977); *Hasselbring v. State*, 441 N.E.2d 514 (Ind. App. 1982); *Nunn v. State*, 450 N.E.2d 495 (Ind. 1983); *Prince v. Parke*, 907 F. Supp. 1243 (N.D. Ind. 1995).

NOTES TO DECISIONS

ANALYSIS

In general.
Application.
Challenges to exclusion.
Discrimination.
—In general.
—Race.
—Sex.
Elimination of voters not registered.
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Property owners.
Substantial compliance.
—Defined.
—Prejudice.
—Substantial compliance found.
—Substantial compliance not found.
Use of property tax rolls.
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In General.

The purpose of this section is to ensure that the method used in selecting the jury is not arbitrary and does not result in the systematic exclusion of any group, and where such is the case minor irregularities from the statutes in the selection of jurors will not create a prejudice to the substantial rights of defendant. *Beck v. State*, 414 N.E.2d 970 (Ind. App. 1981).

The jury selection process should be such as to reflect a reasonable cross section of the community from which the jury is drawn. *Moore v. State*, 427 N.E.2d 1135 (Ind. App. 1981).

Application.

The first paragraph of this section [now subsection (a)] applies to every county in the

state. *Cross v. State*, 272 Ind. 223, 397 N.E.2d 265, 72 Ind. Dec. 630 (1979).

Challenges to Exclusion.

In order to show reversible error in the manner in which prospective jurors are chosen, an appellant must show a common thread running through the excluded group, showing that the exclusion was such as to prevent juries from being made up of a certain segment of the population of the community. *Lambert v. State*, 643 N.E.2d 349 (Ind. 1994). See also *Lambert v. State*, 675 N.E.2d 1060 (Ind. 1996).

Discrimination.

—In General.

This section need not be followed where the result would be to arbitrarily exclude classes of citizens from jury service, as such an exclusion would constitute a denial of equal protection of the law to one tried before a jury so constituted. *State ex rel. Brune v. Vanderburgh Circuit Court*, 255 Ind. 505, 265 N.E.2d 524, 24 Ind. Dec. 279 (1971).

Jury selection process was not invalidated where defendant failed to show a "significant disparity" between the percentage of Negro citizens selected for jury duty and the percentage of Negro citizens in the community. *Sanders v. State*, 259 Ind. 43, 284 N.E.2d 751, 31 Ind. Dec. 729 (1972).

Where there was no evidence to show that there was either an intentional or systematic exclusion of certain groups, the mere fact that the percentage of women and the percentage of persons over 65 selected for the jury venire was disproportionate to the percentage of such groups contained on the voting lists did not show that defendant was denied a fair and impartial jury. *Booth v. State*, 416 N.E.2d 911 (Ind. App. 1981).

Discrimination. (Cont'd)**—Race.**

Where black defendant under thirty years of age contended that a random list of registered voters taken from the locale would not produce a jury of his peers because registered voters of that locale were predominantly white and over thirty and where defendant offered no showing that the use of such lists deliberately excluded jurors based either upon race or age, there was no error in the manner the trial court developed to produce lists of potential jurors. *Smith v. State*, 475 N.E.2d 1139 (Ind. 1985).

Where it was alleged in a challenge to the array of prospective petit jurors by a Negro defendant charged with murder that there were from 10,000 to 20,000 white persons in a county qualified for jury service and over 2,000 Negroes therein so qualified, but over a period of years no Negroes were drawn for jury service and were arbitrarily excluded solely upon the fact of their race or color, and, in the hearing of the issues raised by the challenge, the evidence disclosed that no Negro was ever drawn for jury service, and the state contended that such fact was merely coincidental or for no particular reason, the action of that court in overruling the challenge deprived defendant of his liberty without due process of law and denied him the equal protection of the law. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

No question of the guilt or innocence of an accused could be presented in the trial of issues raised by his challenge to the array of prospective petit jurors on the ground that Negroes were arbitrarily excluded therefrom, since his guilt or innocence could not affect his constitutional right to due process and equal protection of the law. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

When a claim is properly and timely asserted that a citizen whose life is at stake has been denied the equal protection of his country's laws on account of his race, it becomes the duty of the Supreme Court to make inquiry and determination of the facts presented in support of the claim, for equal protection to all is the basic principle upon which justice under law rests. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

The fact that the written words of a state's laws hold out a promise that racial discrimination will not be practiced is not enough to meet the requirements of the United States Constitution, for the 14th Amendment requires that equal protection to all must be given and not merely promised. *Dixon v. State*, 224 Ind. 327, 67 N.E.2d 138 (1946).

The fact that, of 94 prospective jurors called, there were no young male members of any minority race included, did not require

reversal of defendant's convictions, where defendant presented no evidence to establish a prima facie violation of the fair cross-section requirement. *Concepcion v. State*, 567 N.E.2d 784 (Ind. 1991).

To establish a prima facie violation of the "fair cross-section" requirement, a defendant must show: 1) that the group alleged to be excluded is a "distinctive group" in the community; 2) that the representation of this group in jury venires is not fair and reasonable in relation to the number of such persons in the community; and 3) that this underrepresentation is due to systematic exclusion in the jury-selection process; where the record showed that a computer randomly selected jurors from the county's registered voters and where defendant's assertion of the percentage of black voters in the county was without foundation, the defendant failed to satisfy his burden of showing a fair cross-section violation. *Harvey v. State*, 621 N.E.2d 362 (Ind. App. 1993).

—Sex.

Since women are not excluded from jury service by this section, it must be interpreted to mean that the legislature intended that they should be considered for service upon the basis of their personal qualifications the same as men. *Walter v. State*, 208 Ind. 231, 195 N.E. 268, 98 A.L.R. 607 (1935).

Unless there is a showing of bad faith, substantive prejudice to the rights of the accused, some arbitrary system of exclusion, or other evidence of intentional misconduct, indictment or trial by an all male jury is not reversible error. *Brewer v. State*, 253 Ind. 154, 252 N.E.2d 429, 19 Ind. Dec. 264 (1969).

Elimination of Voters Not Registered.

Even if the jury panel was drawn from freeholders or householders who were registered voters so that persons who were not registered voters were eliminated there would be no error in drawing the jury panel. *Clark v. State*, 180 Ind. App. 472, 389 N.E.2d 712, 69 Ind. Dec. 167 (1979).

Grand Jury.

Where jury commissioners selected those persons known to them to be honest, intelligent and of good repute, obtaining their addresses from the telephone directory and then checking them against the voter registration list, there was not a random drawing from a cross-section of the community and grand jury selected therefrom was unlawful. *State ex rel. Burns v. Sharp*, 271 Ind. 344, 393 N.E.2d 127, 70 Ind. Dec. 741 (1979).

Judicial Notice.

It is not error for court to take judicial notice that jury panel was selected at random

Judicial Notice. (Cont'd)

from the lists of registered voters. *Clark v. State*, 180 Ind. App. 472, 389 N.E.2d 712, 69 Ind. Dec. 167 (1979).

Motion to Quash Jury Panel.

Court on appeal would not reverse the trial court's overruling of defendant's motion to quash jury panel because selected in a manner contrary to this section, in that the selection was not made as nearly as possible in proportion to the population of each county commissioner's district where defendant did not show the number of prospective jurors selected from each county commissioner's district at the time defendant's jury panel was selected. *George v. State*, 73 Ind. Dec. 115, 397 N.E.2d 1027 (Ind. App. 1979).

Names in Jury Box.

The conviction of accused by a petit jury drawn from the jury box which contained names left over from the preceding year and also names for the current year, selected as required by the statute, will not be set aside on the ground of the irregularity in not emptying the box at the beginning of the current year, where the alleged irregularity could not have been prejudicial to the defendant's rights. *Crickmore v. State*, 213 Ind. 586, 12 N.E.2d 266 (1938).

An order of the Vanderburgh Circuit Court directing the jury commissioners to select the names of grand and petit jurors from a list of legal voters and citizens of the United States contained in the master file of the voters of Vanderburgh County and to make such selection by wards and townships, rather than by the method prescribed by this section, was a recognition that since the enactment of the statute, which imposed an excise tax on motor vehicles in lieu of ad valorem property tax thereby removing motor vehicle owners from the property tax rolls, the method prescribed by this section, is no longer adequate for the selection of juries, since names selected from the tax duplicates and schedules would not contain a list of persons that would be a representative cross section of the citizens of Vanderburgh County. *State ex rel. Brune v. Vanderburgh Circuit Court*, 255 Ind. 505, 265 N.E.2d 524, 24 Ind. Dec. 279 (1971).

Petit Juries.

The failure to impanel the petit jury at the same drawing at which the grand jury was impaneled did not invalidate the impaneling of the grand jury. *Leonard v. State*, 249 Ind. 361, 232 N.E.2d 882, 12 Ind. Dec. 505 (1968).

This section is a clear expression of legislative intent that any person who might be interested in any case which might be tried by a jury selected from the names drawn should be excluded from the list of prospective jurors.

Harrison v. State, 231 Ind. 147, 106 N.E.2d 912, 32 A.L.R.2d 875 (1952).

Property Owners.

There was no showing that property owners as a group were excluded from jury panel made up exclusively from voter registration lists; many property owners are registered voters and there was no showing that a jury made up entirely of registered voters excluded property owners. *Lambert v. State*, 643 N.E.2d 349 (Ind. 1994). See also *Lambert v. State*, 675 N.E.2d 1060 (Ind. 1996).

Substantial Compliance.

Even if this section were read to require both voter registration and tax lists to be used as sources for potential jurors, the omission of the latter would not render the process invalid; rather, substantial compliance would be found. *Bradley v. State*, 649 N.E.2d 100 (Ind. 1995).

—Defined.

Where one of jury commissioners testified that names of jurors were taken in substantially equal numbers from each of townships in county, challenge to array of jurors on ground that selection of such names was not made in equal numbers from each county commissioner's district was properly overruled, as there was substantial compliance with statute. *Hitch v. State*, 210 Ind. 588, 4 N.E.2d 184 (1936).

—Prejudice.

Where there is substantial compliance with the jury procedure, the defendant must demonstrate a showing of prejudice; however, where there is lack of substantial compliance, the defendant need not show actual prejudice. *Rogers v. State*, 428 N.E.2d 70 (Ind. App. 1981).

—Substantial Compliance Found.

Use of voter registration figures by district rather than census figures to establish the proportions under this section was a substantial compliance with the requirements of this section. *Moore v. State*, 427 N.E.2d 1135 (Ind. App. 1981).

Where the use of a computer for purposes of jury selection did not result in systematic exclusion of any group, the voter registration list was not based upon political affiliation, the method resulted in an impartial selection of jurors from a cross-section of the community, who were chosen in a random method, and the method employed was very similar to the method outlined for counties with larger populations in IC 33-4-5.5-1 et seq., the jury commissioners acted lawfully in using the computer and this method substantially complied with this section. *Rogers v. State*, 428

Substantial Compliance. (Cont'd)**—Substantial Compliance****Found.** (Cont'd)

N.E.2d 70 (Ind. App. 1981). (Subsection (c) has since been added to this section.)

Computerized jury selection procedure was in substantial compliance with requirements of this section. *Pitman v. State*, 436 N.E.2d 74 (Ind. 1982). (Subsection (c) has since been added to this section.)

Although federal census figures might have offered a more complete data base for selection of jury venires, jury commissioners' method of using district voter registration figures substantially complied with this section and was likely to result in a properly proportioned selection. *Tawney v. State*, 439 N.E.2d 582 (Ind. 1982).

—Substantial Compliance Not Found.

Where jury commissioners selected every tenth name from the alphabetical list of registered voters, precinct by precinct, and placed them on a list in the same order, the provisions of this section were not substantially complied with. *Cross v. State*, 272 Ind. 223, 397 N.E.2d 265, 72 Ind. Dec. 630 (1979).

Where there were numerous jury selection irregularities alleged in a politically-colored investigation and among such irregularities the names for the grand jury in question had been drawn from a jury box which had not been purged for as many as six years, that during most of the six-year period names were chosen from politically-labeled voter lists, and that in selecting the names comprising the pool of prospective jurors to be placed in the box the commissioners acted not in concert but entirely on their own, there was no substantial compliance with the law and indictment was void without a showing of prejudice. *Wireman v. State*, 418 N.E.2d 1182 (Ind. App. 1981), *aff'd*, 432 N.E.2d 1343 (Ind.), *cert. denied*, 459 U.S. 992, 103 S. Ct. 350, 74 L. Ed. 2d 389 (1982).

Use of Property Tax Rolls.

The continued practice in Porter County of selecting veniremen solely from real property tax rolls was disapproved by the Court of Appeals. *Moore v. State*, 427 N.E.2d 1135 (Ind. App. 1981).

Use of Voter Registration Lists.

Where there is no demonstration that voter registration lists do not present a reasonable cross section of the people of the county or that their use resulted in the exclusion of certain groups from jury selection, the trial court does not err in overruling the defendant's challenge to the jury venire. *Lloyd v. State*, 448 N.E.2d 1062 (Ind. 1983).

The computerized selection of potential jurors from voter registration lists alone, without the additional use of tax lists, is adequate to satisfy the statutory requirements. *Bradley v. State*, 649 N.E.2d 100 (Ind. 1995).

Defendant made no showing that property owners who were not registered to vote were excluded by jury venire selection system, and defendant did not show how selection system drawing names from voter registration lists only resulted in a pool of prospective jurors not representative of the people of the county or that use of only the voter lists resulted in the deliberate exclusion of certain groups from jury selection, so that the trial court did not err when it allowed the case to go to trial with the challenged venire. *Peoples v. State*, 649 N.E.2d 638 (Ind. App. 1995).

A computerized jury selection system containing the voter registration list of the county, where the list does not indicate voter's race, is expressly permitted by this section and there is no purposeful discrimination with regard to its use. *Smith v. State*, 658 N.E.2d 910 (Ind. App. 1995).

Where defendant had not demonstrated that the county voter registration list did not represent a reasonable cross-section of the citizens of the county or that the use of the voter registration list resulted in the exclusion of African-Americans as potential jurors, defendant was not denied equal protection of the laws under the fourteenth amendment, nor was he denied a fair and impartial jury under the sixth amendment. *Smith v. State*, 658 N.E.2d 910 (Ind. App. 1995).

Waiver of Irregularities.

The objection that a juror is not a voter must be made and shown before he is sworn, or it is waived. *Patterson v. State*, 70 Ind. 341 (1880).

Irregularities in the selection of prospective jurors by the jury commissioners are waived by accepting the jurors on the trial of a case, where an examination of the records in the clerk's office would have disclosed the facts in time to have interposed objections by a plea in abatement. *Fenwick v. State*, 197 Ind. 572, 150 N.E. 764 (1926).

Where the public records in the clerk's office would not disclose irregularities in the drawing of the jury, defendant did not waive such irregularities by accepting the jurors on the trial of the case. *Cross v. State*, 272 Ind. 223, 397 N.E.2d 265, 72 Ind. Dec. 630 (1979).

Defendant waived any error in the selection of the jury by not including the issue in his motion to correct errors but raising it for the first time in the appeal. *Thomas v. State*, 459 N.E.2d 373 (Ind. 1984).

Collateral References. Exclusion of attorneys from jury list in criminal cases. 32 A.L.R.2d 890.

Exclusion of women from grand or trial jury

panel in criminal case. 9 A.L.R.2d 661.

Age group underrepresentation in grand jury or petit jury venire. 62 A.L.R.4th 859.

33-4-5-3. Special venire — New names. — Whenever any such court shall be of the opinion, that by reason of numerous challenges in any cause, a special venire should issue for jurors, it shall direct the clerk to draw from said box such number of names as shall be deemed proper, and the persons so drawn shall be summoned by virtue of such special venire. If, by reason of such special drawing or otherwise, the names in such box shall be exhausted, so that any of the courts of the county cannot be furnished with juries at any term during the calendar year, the circuit court, or judge thereof in vacation, shall by order require such jury commissioners at a time to be fixed, to deposit in said box such additional number of names as said court or judge shall name in the order, and they shall be selected under the rules and regulations prescribed in section 2 [IC 33-4-5-2] of this chapter, and the box shall then be delivered to the clerk, as in that section provided, to be drawn by the clerk as may be necessary under the provisions of section 9 [IC 33-4-5-9] of this chapter. [Acts 1881 (Spec. Sess.), ch. 69, § 4, p. 557; 1981, P.L. 272, § 20; P.L.3-1990, § 108.]

Cited: *Wireman v. State*, 418 N.E.2d 1182 (Ind. App. 1981).

NOTES TO DECISIONS

ANALYSIS

In general.

Discretion of court.

Method of drawing.

Regular panel becoming disengaged.

Waiver of objections.

In General.

The court may direct the names of persons to be drawn from the jury box, and such persons summoned as jurors. *Hauk v. State*, 148 Ind. 238, 46 N.E. 127, 47 N.E. 465 (1897), overruled on other grounds, *White v. State*, 234 Ind. 209, 125 N.E.2d 705 (1955).

Whether vacancies in the regular panel, which had been requested by the defendant for the trial of the cause, should be filled from the special venire or from bystanders was within the discretion of the court. *Harlan v. State*, 190 Ind. 322, 130 N.E. 413 (1921) (law providing for jury from bystanders now repealed).

The refusal of the court to order a special venire from the jury box at the request of the defendant is not reversible error where it does not appear that his substantial rights were affected. *Pritchett v. State*, 195 Ind. 404, 145 N.E. 488 (1924).

The denial of a motion, made three days

before trial, for a special venire to be drawn by the clerk, as provided by this section, and simultaneously directing the sheriff to subpoena jurors to fill vacancies, was erroneous. *Silverman v. State*, 199 Ind. 225, 156 N.E. 549 (1927).

It was error for the court to order a deputy sheriff on Saturday to have special jurors present for service in criminal cases on the following Monday, since the court should have proceeded under this section, by ordering the clerk to draw names from the jury box, former IC 34-2-19-1 (repealed; for present similar provisions, see IC 34-36-4-1) not being applicable. *Lampkins v. State*, 89 Ind. App. 42, 165 N.E. 776 (1929).

Discretion of Court.

The right to a special venire is not absolute but, under the statute, rests in the discretion of the trial court. *Hawkins v. State*, 219 Ind. 116, 37 N.E.2d 79 (1941); *Waltermire v. State*, 223 Ind. 283, 59 N.E.2d 123 (1945), modified on other grounds, *Waltermire v. State*, 233 Ind. 287, 60 N.E.2d 526 (1945).

Method of Drawing.

Where the court directed the clerk, the jury commissioners, and the sheriff, as to drawing a special venire, that the names of the per-

Method of Drawing. (Cont'd)

sons drawn for the special venire should not be furnished to either the state or the defendant until the sheriff made his return in the special venire, to which the defendant objected and excepted; it was held that the method provided by statute for drawing regular and special juries from the jury box was not followed, since it was not a public drawing as required by statute. *Souerdike v. State*, 214 Ind. 523, 15 N.E.2d 379 (1938).

The same method is provided for the drawing of both the regular and special panels, in view of this section and IC 33-4-5-2. *Souerdike v. State*, 214 Ind. 523, 15 N.E.2d 379 (1938).

Where, after the commencement of trial, the judge ordered the sheriff to summon 20 jurors from persons outside the courthouse because various members of the regular panel were excused for cause, and accused objected to the order given the sheriff and filed a written request that a special venire be selected, but made no objection to going to trial

before the jury as finally selected, and it was not shown that any one of the jurors selected was in any way disqualified, the overruling of the request for the special venire was not error. *Waltermire v. State*, 223 Ind. 283, 59 N.E.2d 123 (1945).

Regular Panel Becoming Disengaged.

If the regular panel becomes disengaged before a special jury is fully impaneled, such special jury need not be discharged and the regular jury used. *Myers v. Moore*, 3 Ind. App. 226, 28 N.E. 724 (1891).

Waiver of Objections.

Where defendant, in a criminal case, did not renew his objection to the jury at the commencement of the trial, he thereby accepted the jury, and waived all rights to question the manner in which the special venire was drawn, in view of Acts 1881 (Spec. Sess.), ch. 69, § 3 (since repealed). *Souerdike v. State*, 214 Ind. 523, 15 N.E.2d 379 (1938).

33-4-5-4. Clerk to keep box locked. — Said box shall remain in possession of the clerk, securely locked and the only key thereto[,] shall be and remain in the possession of the jury commissioner, of opposite politics from said clerk, who shall be present at each and every time said box is to be opened, for any purpose within the provisions of this chapter. [Acts 1881 (Spec. Sess.), ch. 69, § 5, p. 557; 1895, ch. 128, § 1, p. 252; 1981, P.L. 272, § 21.]

Compiler's Notes. The comma following "key thereto" was bracketed by the compiler to indicate apparent surplusage.

NOTES TO DECISIONS**ANALYSIS**

Clerk presumed present.
"Substantial compliance" defined.

Clerk Presumed Present.

It will be presumed that the clerk of the court was present at the drawing of names of jurors and had possession of the jury box. *Randolph v. State*, 200 Ind. 210, 162 N.E. 656 (1928).

Specifications of an indictment that the grand jurors' names were drawn by the jury commissioners, and not by the court clerk, were insufficient, in the absence of an allegation that the clerk was not present and did not direct the commissioners to draw the names of jurors. *Randolph v. State*, 200 Ind. 210, 162 N.E. 656 (1928).

"Substantial Compliance" Defined.

Challenge to array of jurors on ground that

key to jury box was not kept in possession of jury commissioner of opposite politics from clerk as required by statute was properly overruled, where evidence showed that there were three keys, one in possession of each of jury commissioners and one in possession of clerk, and that all three keys were necessary to unlock such box, as this is substantial compliance with statute which requires key which unlocks such box shall be in possession of jury commissioner of opposite politics from such clerk. *Hitch v. State*, 210 Ind. 588, 4 N.E.2d 184 (1936).

Record showed that statutory provisions regarding the placing of names in jury box, locking and keeping thereof and drawing of names were not followed and were grounds for reversal when properly presented. *Rudd v. State*, 231 Ind. 105, 107 N.E.2d 168 (1952).

33-4-5-5. Who ineligible — Failure to act — Contempt of court. — No person shall be appointed a jury commissioner who, at the time is party to, or interested in a cause pending in the county, which may be tried by a jury to be drawn during the calendar year next succeeding his appointment. Any person appointed a jury commissioner, who shall fail to take upon himself said office, or having accepted the same, shall fail, without good cause, to discharge any of the duties thereof, shall be deemed guilty of contempt of the court, and shall be summarily punished by fine, of not less than five (\$5.00) nor more than one hundred dollars (\$100). [Acts 1881 (Spec. Sess.), ch. 69, § 7, p. 557.]

NOTES TO DECISIONS

Effect of Disqualification on Indictment.

An indictment will not be quashed or set aside because a jury commissioner who acted

electing grand jurors was not qualified to act. *State v. Sutherland*, 165 Ind. 339, 75 N.E. 642 (1905).

33-4-5-6. Vacancy — Appointment — Qualifications. — Should a vacancy occur in the office of jury commissioner, at any time, or should any such commissioner fail to act when required, or because of illness or for any other cause, be unable to act, the circuit court shall appoint a person to fill such vacancy, or to act for the time being, as the case may require, and such person so appointed shall possess the qualifications required for jury commissioners, and shall be an adherent of the same political party as is the commissioner in whose stead he is appointed to serve, and he shall take the oath required by this chapter. For the time actually employed in the performance of his duties, each jury commissioner shall be allowed a per diem to be fixed by the court, and upon such allowance the county auditor shall draw his warrant, and the same be paid out of the county treasury. [Acts 1881 (Spec. Sess.), ch. 69, § 8, p. 557; 1939, ch. 132, § 2, p. 656; 1981, P.L. 272, § 22.]

33-4-5-7. Qualifications of jurors — Service. — (a) A person shall be excused from acting as a juror if the person:

- (1) is over sixty-five (65) years of age;
- (2) is a member in active service of the armed forces of the United States;
- (3) is an elected or appointed official of the executive, legislative, or judicial branches of government of:

- (A) the United States;
- (B) Indiana; or
- (C) a unit of local government;

who is actively engaged in the performance of the person's official duties;

- (4) is a member of the general assembly who makes the request to be excused before being sworn as a juror;
- (5) is an honorary military staff officer appointed by the governor under IC 10-2-1-5;
- (6) is an officer or enlisted person of the guard reserve forces authorized by the governor under IC 10-2-8;

- (7) is a veterinarian licensed under IC 15-5-1.1;
- (8) is serving as a member of the board of school commissioners of the city of Indianapolis under IC 20-3-11-2;
- (9) is a dentist licensed under IC 25-14-1;
- (10) is a member of a police or fire department or company under IC 36-8-3 or IC 36-8-12; or
- (11) would serve as a juror during a criminal trial and the person is:
 - (A) an employee of the department of correction whose duties require contact with inmates confined in a department of correction facility; or
 - (B) the spouse or child of a person described in clause (A);

and desires to be excused for that reason.

(b) A prospective juror is disqualified to serve on a jury if any of the following conditions exist:

- (1) The person is not a citizen of the United States, at least eighteen (18) years of age, and a resident of the county.
- (2) The person is unable to read, speak, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily a juror qualification form.
- (3) The person is incapable of rendering satisfactory jury service due to physical or mental disability. However, a person claiming this disqualification may be required to submit a physician's or authorized Christian Science practitioner's certificate confirming the disability, and the certifying physician or practitioner is then subject to inquiry by the court at the court's discretion.
- (4) The person is under a sentence imposed for an offense.
- (5) A guardian has been appointed for the person under IC 29-3 because the person has a mental incapacity.
- (6) The person has had rights revoked by reason of a felony conviction and the rights have not been restored.

(c) A person may not serve as a petit juror in any county if the person served as a petit juror in the same county within the previous three hundred sixty-five (365) days. The fact that a person's selection as a juror would violate this subsection is sufficient cause for challenge.

(d) A grand jury, a petit jury, or an individual juror drawn for service in one (1) court may serve in another court of the county, in accordance with orders entered on the record in each of the courts.

(e) The same petit jurors may be used in civil cases and in criminal cases.

(f) A person may not be excluded from jury service on account of race, color, religion, sex, national origin, or economic status. [Acts 1881 (Spec. Sess.), ch. 69, § 9, p. 557; 1917, ch. 176, § 1, p. 688; 1951, ch. 49, § 1; 1959, ch. 62, § 1; P.L.171-1984, § 20; P.L.282-1989, § 2; P.L.4-1998, § 4.]

Indiana Law Journal. Intentional Exclusion of Women, 11 Ind. L.J. 386.

Opinions of Attorney General. Since Indiana Supreme Court in *State ex rel. Brune v. Vanderburgh Circuit Court*, 255 Ind. 505, 265 N.E.2d 524 (1971), has held that the prior method of jury selection under the statute is

no longer adequate for the purpose for which it was designed, the other counties also must abide by this decision requiring them to use the county master file of voters in lieu of tax records in selection of jury because the statute was statewide and general, as opposed to specific legislation. 1971, No. 27, p. 70.

Cited: *State ex rel. Brune v. Vanderburgh* Circuit Court, 255 Ind. 505, 24 Ind. Dec. 279, 265 N.E.2d 524 (1971); *Johnson v. State*, 442

N.E.2d 1065 (Ind. 1982); *Shepherd v. State*, 547 N.E.2d 839 (Ind. 1989); *Atkins v. State*, 561 N.E.2d 797 (Ind. App. 1990).

NOTES TO DECISIONS

ANALYSIS

In general.
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In General.

Where a juror, when asked if he had served as a juror in a former trial of the same case, answered that he had not and was accepted without objection from the plaintiff, who was present at the former trial and testified as a witness, and knew that the juror had served on the former trial, when he answered that he had not, a new trial would not be granted for the misconduct of the juror, as it was the plaintiff's duty to object at the time. *Buck v. Hughes*, 127 Ind. 46, 26 N.E. 558 (1891).

By allowing a juror to serve after a disclosure in court of his incompetency, all objection to his competency on that account was waived. *Stevens v. Stevens*, 127 Ind. 560, 26 N.E. 1078 (1891).

Where the state was neither surprised nor prejudiced by the testimony of a witness called by it, it could not contradict such witness by evidence of contradictory statements made out of court. *Rhodes v. State*, 128 Ind. 189, 27 N.E. 866, 25 Am. St. R. 429 (1891).

When the evidence as to the competency of a juror is conflicting, the decision of the court stands. *Smith v. State*, 142 Ind. 288, 41 N.E. 595 (1895).

An order refusing a new trial on the ground of insanity of a juror would not be disturbed on appeal, where the appellant's counsel had notice that some question existed of the juror's mental qualifications, although not of the inquisition eight years before, and his confinement in a hospital, and the record did not show the full examination of the juror. *Douthitt v. State*, 144 Ind. 397, 42 N.E. 907 (1896).

Constitutionality.

Exclusion of unregistered voters from jury did not violate defendant's right to trial by an

impartial jury of his peers. *McPherson v. State*, 178 Ind. App. 539, 383 N.E.2d 403, 66 Ind. Dec. 277 (1978).

This section requiring a juror to be a freeholder or householder is not unconstitutional. *Wooten v. State*, 418 N.E.2d 538 (Ind. App. 1981).

Defective Eyesight.

A juror whose eyesight was so defective that he could not see the expression on the faces of the witnesses, nor observe their deportment or demeanor, was not competent. *Rhodes v. State*, 128 Ind. 189, 27 N.E. 866, 25 Am. St. R. 429 (1891).

Exemption for Age.

Assuming, for sake of argument, that persons older than 65 are a "distinctive" group in the county where the defendant was tried, he made no showing, either at trial or during the post-conviction proceeding, that as a result of the statutory exemption the representation of older persons in jury venires was not fair and reasonable in relation to the number of such persons in the community. *Thompkins v. State*, 482 N.E.2d 710 (Ind. 1985).

Firemen.

The statute exempting firemen from jury service applies only to members of fire companies organized under the authority of cities or towns. *Leedy v. Bourbon*, 12 Ind. App. 486, 40 N.E. 640 (1895).

Grand Jury.

A motion to quash an indictment reaches only matters apparent on the face of the indictment, not irregularity in selection, impaneling, and swearing the grand jury. *Mack v. State*, 203 Ind. 355, 180 N.E. 279, 83 A.L.R. 1349 (1932).

Where an indictment has been returned into open court by the grand jury, duly indorsed by the foreman, it is conclusive as to regularity of the finding. *Mack v. State*, 203 Ind. 355, 180 N.E. 279, 83 A.L.R. 1349 (1932).

Since freedom from personal bias is not one of the initial legal qualifications for a grand juror, the presence of such bias in a juror would not render the grand jury "illegally constituted" and cannot serve as a proper legal basis for a motion to dismiss an indictment. *Stevens v. State*, 265 Ind. 396, 357 N.E.2d 245, 55 Ind. Dec. 482 (1976).

The legislature in enacting this section intended that grand jurors be actual members

Grand Jury. (Cont'd)

of the community and have had experience in making important and binding practical decisions of everyday living free from the supervision of parents or others and where the record shows that a grand juror, although only twenty years old, lived in the community where the grand jury was convened, maintained an apartment with his nineteen year old brother on a day to day basis, and cared for himself without supervision from his parents or others; the trial court properly concluded that the juror had the necessary experience in making important and binding practical decisions daily affecting every aspect of his personal welfare within the intent of the legislature and as such fulfilled the requirement that a grand juror be a householder. *Stevens v. State*, 265 Ind. 396, 357 N.E.2d 245, 55 Ind. Dec. 482 (1976).

Neither the relationship to counsel nor a personal bias is a factor which disqualifies a grand juror. A grand jury is not a trial body or an ultimate trier of fact. Thus, the Sixth Amendment right to a fair trial by an impartial jury is not violated by a lack of impartiality on the part of a grand juror. *Walker v. State*, 621 N.E.2d 627 (Ind.), rev'd on other grounds, 632 N.E.2d 723 (Ind. 1993).

Householder.

Trial court properly removed prospective jurors who were residing in the home of their parents and thus did not qualify as householders. *Newman v. State*, 485 N.E.2d 58 (Ind. 1985).

Property Interest.

Owners of real estate subject to assessment are not disqualified to serve on grand jury indicting a sewer contractor for presenting false claims. *Pontarelli v. State*, 203 Ind. 146, 176 N.E. 696 (1931).

Qualified Voter.

The objection that a juror is not a voter must be made and his disqualification shown before he is sworn as a juror to try the case, or it is waived. *Patterson v. State*, 70 Ind. 341 (1880).

One who has lived in a county for four years, but who has never voted nor registered as a voter, is nevertheless a voter and eligible to serve as a juror, in view of this section and Ind. Const., art. 2, § 2. *Fritch v. State*, 199 Ind. 89, 155 N.E. 257 (1927).

Relationship.

The circumstances that a juror was related to one of the parties by marriage with his niece, was a sufficient cause of challenge by the adverse party. *Trullinger v. Webb*, 3 Ind. 198 (1851).

The husband of a sister of a decedent leav-

ing issue, was not a competent juror in a suit brought by the widow. *Dearmond v. Dearmond*, 10 Ind. 191 (1858).

Where a motion was made by the losing party for a new trial upon the ground that he had, since the trial, discovered that one of the jurors was a second cousin of the opposite party it was held that, though neither the juror nor the successful party knew of such relationship until after the trial, and though the losing party had not questioned the jury concerning the matter of relationship, he had not waived his right, but was entitled to a new trial. *Hudspeth v. Heston*, 64 Ind. 133 (1878).

Appellant's request for a reversal upon the ground that appellee knowingly permitted a juror to serve who was the husband of a niece of the wife of one of the appellee's attorneys could not be sustained, since such a relationship of a juror to one of the counsel could not, under the long existing rule, be deemed cause for setting aside a verdict. *Miller v. Louisville, N.A. & C.R.R.*, 128 Ind. 97, 27 N.E. 339, 25 Am. St. R. 416 (1891).

Residence.

Where nonresidence of juror became known to attorney for defendant, but court was not notified of that fact, and jury was allowed to retire, verdict could not be challenged upon ground of nonresidence. *Sturrock v. State*, 229 Ind. 161, 96 N.E.2d 226 (1951).

A new trial will not be granted solely because a juror was incompetent on account of nonresidence, although this fact was unknown to accused at the trial, and although the juror stated on his voir dire that he was a resident and was qualified to vote in the county. The question of nonresidence is one for the discretion of the trial court. *Sturrock v. State*, 229 Ind. 161, 96 N.E.2d 226 (1951).

Service Within Previous Year.

Jurors may be challenged if they served as jurors within the preceding year. *Christie v. State*, 44 Ind. 408 (1873); *Barker v. Hine*, 54 Ind. 542 (1876); *Goshen v. England*, 119 Ind. 368, 21 N.E. 977, 5 L.R.A. 253 (1889); *Brooks v. Jennings County Agric. Joint-Stock Ass'n*, 35 Ind. App. 221, 73 N.E. 951 (1905).

If a prospective juror is challenged on account of service within a year, it must have appeared that he was a member of the regular panel to make the challenge unavailable. *Goshen v. England*, 119 Ind. 368, 21 N.E. 977, 5 L.R.A. 253 (1889).

Acceptance, without exhausting peremptory challenges, of jurors who had served within year does not constitute grounds for reversal. *Siberry v. State*, 149 Ind. 684, 39 N.E. 936 (1895); *Kocher v. State*, 189 Ind. 578, 127 N.E. 3 (1920); *Indianapolis St. R.R. v. Bordenchecker*, 33 Ind. App. 138, 70 N.E. 995

Service Within Previous Year. (Cont'd)
(1904); *Evansville & S.I. Traction Co. v. Johnson*, 54 Ind. App. 601, 97 N.E. 176 (1912).

If persons selected to fill vacancies on the regular panel afterward are called as jurors on that regular panel in other causes, they cannot be challenged because of jury service within a year. *Michigan City v. Phillips*, 163 Ind. 449, 71 N.E. 205 (1904), overruled on other grounds, *Spurlock v. State*, 185 Ind. 638, 114 N.E. 209 (1916).

If a prospective juror has served on a jury, either as talesman or as a member of the regular panel, within a year next before the term when he is called as a juror, such juror may be challenged for cause. *Brooks v. Jennings County Agric. Joint-Stock Ass'n*, 35 Ind. App. 221, 73 N.E. 951 (1905); *Mason v. State*, 170 Ind. 195, 83 N.E. 613 (1908).

Where the record shows that 12 men, other than three against whom objections were made, testified on voir dire examination that they were members of the regular panel, and their testimony was not questioned, the testimony of the three that they had served on a jury within the year, in the absence of a showing that they were members of a regular panel, must be deemed to mean they served in the capacity of talesmen, and they were therefore disqualified. *Benadum v. State*, 182 Ind. 510, 107 N.E. 8 (1914).

Temporary excuse of juror during term will not disqualify him from afterwards serving at same term. *Douglass v. State*, 18 Ind. App. 289, 48 N.E. 9 (1897).

—Regular Panel.

If a person is a member of the large regular panel he may serve repeatedly as a regular

trial juror at any time during that large regular panel's legal existence. *Arbuckle v. State*, 173 Ind. App. 529, 364 N.E.2d 772, 58 Ind. Dec. 241, rev'd on other grounds, 173 Ind. App. 529, 366 N.E.2d 200, 58 Ind. Dec. 584 (1977).

A prospective juror may be challenged for previous jury service within one year only if he is not a member of the regular panel. *Resnover v. State*, 267 Ind. 597, 372 N.E.2d 457, 61 Ind. Dec. 66 (1978).

When a trial judge has a regular panel of jurors, serving a maximum of three months, these jurors are allowed to serve repeatedly as a regular trial juror at any time during the panel's existence. In fact, it has long been recognized that a person may be challenged for having sat on a jury within the previous year only if he is not a member of the regular panel. *Dancey v. Stroud*, 580 N.E.2d 332 (Ind. App. 1991).

Women.

Where jurors are to be selected from qualified electors, the adoption of a constitutional amendment making women electors qualifies them for jury service. *Palmer v. State*, 197 Ind. 625, 150 N.E. 917 (1926).

Since women became voters, they have been eligible to serve as members of a grand or petit jury, and, therefore, as foreman thereof. *Palmer v. State*, 197 Ind. 625, 150 N.E. 917 (1926).

A woman freeholder or householder, who was a resident voter of the county, may sit on petit jury in a criminal case, in view of this section, and of U.S. Const., Amend. 19. *Wilkinson v. State*, 197 Ind. 642, 151 N.E. 690 (1926).

Collateral References. Jury: Who is lawyer or attorney disqualified or exempt from

service, or subject to challenge for cause. 57 A.L.R.4th 1260.

33-4-5-8. [Repealed.]

Compiler's Notes. This section, concerning jury fee, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4.

33-4-5-9. Selection of jurors. — (a) During the month of December, and at such other times as the judge deems necessary, the judge of any court of record in which jury trials are had shall by written order direct the clerk of the circuit court to draw grand jurors or petit jurors from the names selected by the jury commissioners, which names shall be drawn by the clerk in the presence of the jury commissioners, in a number equal to the number of jurors to be summoned according to the judge's orders. The names of jurors for each court having criminal jurisdiction shall be drawn first.

(b) At the time of the drawing, the clerk shall enter in the order book of the court a list of the names drawn, in the order in which they were drawn. He shall attach his certificate to attest to the accuracy of the list. The clerk shall issue venires for such jurors as the courts direct. However, the jurors called to service shall be identified long enough before the trial or grand jury session to permit counsel to study their backgrounds.

(c) Notice to or summons of persons for jury duty shall be served by the clerk of the circuit court upon order of the court.

(d) The sheriff or bailiff shall call the jurors to the jury box in the same order in which their names were drawn. Jurors shall serve for three (3) months, or for a shorter period if a shorter period is specified in the judge's written order.

(e) The provisions of this section shall be construed to supplement IC 34-36-2, and IC 34-36-3-5 through IC 34-36-3-7, and other statutory provisions for special juries, for juries by agreement, for juries from other counties, for struck juries, and for special venires. This section shall be construed liberally, to the effect that no indictment shall be quashed, and no trial, judgment, order, or proceeding shall be reversed or held invalid on the ground that the terms of this section have not been followed, unless it appears that the noncompliance was either in bad faith or was objected to promptly upon discovery and was probably harmful to the substantial rights of the objecting party. [P.L.171-1984, § 22; P.L.167-1984, § 33; P.L.1-1998, § 174.]

Cited: *Terry v. State*, 602 N.E.2d 535 (Ind. App. 1992).

NOTES TO DECISIONS

ANALYSIS

Noncompliance.

Service within previous year.

—Regular panel.

Noncompliance.

In view of subsection (e), where defendant claims there was substantial noncompliance with the jury selection process, defendant must show noncompliance with this chapter and that noncompliance was either in bad faith or, where defendant did object promptly, was probably harmful to his substantial rights. *Thorne v. State*, 509 N.E.2d 877 (Ind. App. 1987), *aff'd*, 519 N.E.2d 566 (Ind. 1988).

In the absence of purposeful, nonrandom exclusion of veniremen, and with no showing of harm to defendant, the trial court's technical noncompliance (excusing potential jurors who were absent for any reason offered or for none at all) with the statutory requirements for jury selection did not amount to reversible error. *Russelburg v. State*, 529 N.E.2d 1193 (Ind. 1988).

Trial court's placement of a juror on the venire out of the order from which the names

were drawn to form the original venire did not prejudice defendants who exercised a peremptory challenge against that juror without exhausting all of his allotted peremptory challenges. *Justice v. State*, 552 N.E.2d 844 (Ind. App. 1990).

In the absence of purposeful, nonrandom exclusion of prospective jurors, and with no showing of harm to the defendant, any technical noncompliance with the statutory requirements for jury selection does not amount to reversible error. *Williams v. State*, 555 N.E.2d 133 (Ind. 1990).

Service Within Previous Year.

—Regular Panel.

When a trial judge has a regular panel of jurors, serving a maximum of three months, these jurors are allowed to serve repeatedly as a regular trial juror at any time during the panel's existence. In fact, it has long been recognized that a person may be challenged for having sat on a jury within the previous year only if he is not a member of the regular panel. *Dancey v. Stroud*, 580 N.E.2d 332 (Ind. App. 1991).

33-4-5-10. [Repealed.]

Compiler's Notes. This section, concerning juror fees, was repealed by P.L.305-1987, § 38. For present provisions, see IC 33-19-1-4.

33-4-5-11. Inapplicability of chapter to certain counties. — (a) This chapter does not apply to a county that chooses under subsection (b) to follow the procedure for jury selection and service set out in IC 33-4-11.

(b) The court administrator or the clerk of the circuit and superior courts of a county may choose to follow the procedure for jury selection and service set out in IC 33-4-11 instead of the procedure set out in this chapter. The court administrator shall serve as the jury commissioner under IC 33-4-11. If the decision to follow IC 33-4-11 is made, all of the provisions of IC 33-4-11 must be followed. [P.L.5-1988, § 165; P.L.12-1992, § 123; P.L.214-1996, § 1; P.L.4-1998, § 5.]

Cross References. Jury selection in Lake County, IC 33-4-5.5. Jury selection in Porter County, IC 33-4-5.6.

CHAPTER 5.5

**UNIFORM JURY SELECTION AND SERVICE LAW
IN LAKE COUNTY**

SECTION.

- 33-4-5.5-1. Policy.
- 33-4-5.5-2. Discrimination prohibited.
- 33-4-5.5-3. Responsibility for selection of jurors — Utilization of computerized jury selection system.
- 33-4-5.5-4. Definitions.
- 33-4-5.5-5. Jury commissioner.
- 33-4-5.5-6. Plan for selection of jurors.
- 33-4-5.5-7. Master list — Contents — Custody — Use.
- 33-4-5.5-8. Drawing of names quarterly — Time.
- 33-4-5.5-9. Procedure for drawing.
- 33-4-5.5-10. Juror qualification form — Contents — Procedure for completion and return — Penalties for noncompliance or misrepresentation.

SECTION.

- 33-4-5.5-11. Disqualification — Grounds.
- 33-4-5.5-12. Jury wheel — Drawings for jury panels — Summons.
- 33-4-5.5-13. Exemptions from jury service.
- 33-4-5.5-14. Procedure for drawing from jury wheel.
- 33-4-5.5-15. Excuse from jury service.
- 33-4-5.5-16. Motion to stay proceedings for noncompliance with jury law.
- 33-4-5.5-17. Records and papers.
- 33-4-5.5-18. [Repealed.]
- 33-4-5.5-19. Limitation on jury service.
- 33-4-5.5-20. Failure to appear for jury service — Penalty.
- 33-4-5.5-21. [Repealed.]
- 33-4-5.5-22. Rules.

33-4-5.5-1. Policy. — It is the policy of this chapter to provide a uniform system of jury selection for all courts so that:

- (1) All persons selected for jury service shall be selected at random from a fair cross section of the population of the area served by the court; and
- (2) That all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this county and an obligation to serve as jurors when summoned for that purpose. [IC 33-4-5.5-1, as added by Acts 1973, P.L. 306, § 1; P.L.1-1989, § 63.]

Cited: Pitman v. State, 436 N.E.2d 74 (Ind. 1982).

NOTES TO DECISIONS

Redrawing Panel.

Where defendant's jury was to be the third chosen and he asked the trial court to put all 50 names in a box, shuffle them, and draw out a new order of selection for his trial but the trial court denied his motion, since the panel of 50 jurors was properly and randomly se-

lected pursuant to the statutory scheme and there is no provision in the statute, nor is there any necessity, to reshuffle the panel and redraw it on subsequent selections, and since defendant presented no prejudice, there was no reversible error. *Dillard v. State*, 498 N.E.2d 1229 (Ind. 1986).

33-4-5.5-2. Discrimination prohibited. — A citizen shall not be excluded from jury service in counties affected by this chapter on account of race, color, religion, sex, national origin, or economic status. [IC 33-4-5.5-2, as added by Acts 1973, P.L. 306, § 1.]

Collateral References. Age group underrepresentation in grand jury or petit jury venire. 62 A.L.R.4th 859.

33-4-5.5-3. Responsibility for selection of jurors — Utilization of computerized jury selection system. — (a) The chief judge of the superior court within counties affected by this chapter shall be responsible for the selection of jurors as prescribed by this section.

(b) The chief judge of the superior court may authorize the utilization of a computerized jury selection system under this chapter. However, the system utilized for the selection system must be fair and may not violate the rights of persons with respect to the impartial and random selection of prospective jurors. The jurors selected under the computerized selection system must be eligible for selection under this chapter. [IC 33-4-5.5-3, as added by Acts 1973, P.L. 306, § 1; P.L.300-1983, § 3.]

33-4-5.5-4. Definitions. — As used in this chapter:

(a) "Court" means the superior court of a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) and also includes all other courts in such counties [county].

(b) "Jury commissioner" may include any deputy court administrator designated by the jury commissioner from time to time to act in his place.

(c) "Master list" means all current, up-to-date voter registration lists for each precinct in the county, which shall be supplemented with names from other sources prescribed pursuant to other sections of this chapter, in order to foster the policy and protect the rights secured by this chapter. The "list" may be in the form of a serially printed list, a magnetic tape, an addressograph file, punched cards, or such other form deemed by the chief judge to be consistent with the provisions of this chapter.

(d) "Voter registration lists" means the official records of persons registered to vote in the most recent general election.

(e) "Jury wheel" means any list, physical device, or electronic system for the storage of the names or identifying numbers of prospective jurors.

(f) "Qualified jury wheel" means the jury wheel in which there are placed the names or identifying numbers of prospective jurors drawn at random from the master list and who are not disqualified.

(g) "Juror qualification form" means the form prescribed for use by the court and mailed to each prospective juror, or an electronic data processing facsimile of that form such as might be created on magnetic tape, punched cards, or computer discs. [IC 33-4-5.5-4, as added by Acts 1973, P.L. 306, § 1; P.L.12-1992, § 124.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than 700,000 is Lake.

The bracketed word "county" was inserted

at the end of subsection (a) by the compiler, following the substitution of "a county" for "counties" near the beginning of the subsection by the 1992 amendment.

NOTES TO DECISIONS

"Court."

Because of subsection (a) defining "court," this chapter does not apply to the

Vanderburgh Circuit Court. *Thorne v. State*, 509 N.E.2d 877 (Ind. App. 1987), *aff'd*, 519 N.E.2d 566 (Ind. 1988).

33-4-5.5-5. Jury commissioner. — (a) The court administrator of the court shall also serve as the jury commissioner for the county, and shall have the powers and perform the duties prescribed in this chapter for jury commissioners, under the direction of the chief judge.

(b) The court administrator in his role as jury commissioner, shall not receive any compensation in addition to his regular salary.

(c) Performance of certain duties of the jury commissioner may be delegated to a deputy court administrator with the express approval of the chief judge.

(d) The jury commissioner may choose to follow the procedure for jury selection and service set out in IC 33-4-11 instead of the procedure set out in this chapter. If the decision to follow IC 33-4-11 is made, all of the provisions of IC 33-4-11 must be followed. [IC 33-4-5.5-5, as added by Acts 1973, P.L. 306, § 1; P.L.4-1998, § 6.]

Cross References. Jury commissioners of circuit courts, IC 33-4-5.

33-4-5.5-6. Plan for selection of jurors. — [(a)] (1) The jury commissioner, under the supervision of the chief judge, shall prepare a written plan for the selection of grand and petit jurors in this county designed to achieve the objectives of, and otherwise comply with the provisions of, this chapter. This plan shall specify the source of names for the master list, the form of the list, the method of selecting names from the list, the forms of and method for maintaining records of names drawn, jurors qualified, and juror's excuses and reasons therefore, the method of drawing names of qualified jurors for prospective service, and the procedures to be followed by prospective jurors in requesting excuse from jury service. The plan shall either specify the number of petit jurors which shall constitute a panel for

civil and criminal cases or describe the uniform manner in which this determination shall be made.

(2) The plan shall be placed into operation after approval by the court. The judges of the court shall examine the plan to ascertain that it complies with the intent and provisions of this chapter. If the plan is found not to comply, the court shall order the jury commissioner to make the necessary change(s).

(3) The plan may be modified at any time pursuant to the procedure specified under this chapter.

(4) The plan shall be submitted by the jury commissioner to the court. The court shall approve or direct modification of the plan within sixty (60) days of its receipt. The approved plan shall go into effect no more than sixty (60) days after approval by the court.

(5) The plan shall be a public document on file in the office of the jury commissioner and available for inspection at all reasonable times. [IC 33-4-5.5-6, as added by Acts 1973, P.L. 306, § 1; 1981, P.L. 272, § 24.]

Compiler's Notes. The bracketed "(a)" was so bracketed by the compiler to indicate designation at the beginning of the section apparent surplusage.

33-4-5.5-7. Master list — Contents — Custody — Use. — (a) The jury commissioner shall compile and maintain a master list consisting of all the voter registration lists for the county, supplemented with names from other lists of persons resident in the county which the Indiana Supreme Court shall from time to time designate as necessary to obtain the broadest cross-section of the county, having determined that use of such supplemental lists is feasible. The Supreme Court shall exercise the authority so to designate from time to time in such manner as to foster the policy and protect the rights secured by this article. These supplemental sources may consist of such lists as those of utility customers, property taxpayers, persons filing income tax returns, motor vehicle registrations, city directories, telephone directories, and driver's licenses. Such lists may not be substituted for the voter registration list. In drawing names from such supplemental lists, the jury commissioner shall avoid duplication of names.

(b)(1) Whoever has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection (a) of this section by the Supreme Court as supplementary sources of names, shall furnish the list to the jury commissioner for inspection, reproduction, and copying at all reasonable times.

(2) When a copy of a list maintained by a public official is furnished, only the actual cost of the copy may be charged to the court.

(3) The master list of names shall be open to the public for examination as a public record, except that the source of names and any information other than name [names] contained in that source shall not be public information. [IC 33-4-5.5-7, as added by Acts 1973, P.L. 306, § 1; 1981, P.L. 272, § 25.]

Compiler's Notes. The bracketed word "names" in subsection (b)(3) was inserted by the compiler to correct an apparent error.

33-4-5.5-8. Drawing of names quarterly — Time. — (a) Names shall be drawn for juror service quarterly, based on a calendar year commencing in January. A public drawing shall be held of names for the next quarter during the first week of the second month of the quarter next preceding that for which names are being drawn, at a time and place prescribed by the jury commissioner.

(b) An alphabetic list of names so drawn shall be created and filed in the office of the jury commissioner. Such list may be in the form of a serial listing or discreet records (such as punched cards or addressograph plates) filed together to constitute said list. No names may be added to this list, except by order of the court. Neither the names drawn nor any list compiled therefrom, shall be disclosed to any person other than pursuant to this chapter or specific order of the chief judge.

(c) The number of names required to be drawn each quarter shall be determined by the jury commissioner after consultation with all judges who may conduct jury trials during the quarter, taking into consideration the number of jurors required for the grand jury.

(d) The frequency of drawing of names may be increased by the jury commissioner without amendment to this chapter when he deems it necessary for purposes of fairness, efficiency, or to ensure compliance with sections of this chapter.

(e) Names shall be drawn randomly in the manner prescribed in section 9 [IC 33-4-5.5-9] of this chapter.

(f) Names so drawn from the master list shall not be returned to the list until one (1) year after the date of the drawing of the name. [IC 33-4-5.5-8, as added by Acts 1973, P.L. 306, § 1.]

33-4-5.5-9. Procedure for drawing. — Assuming the master list contains names in some sequential order, such as alphabetic or numeric sequence, the drawing of names from the master list shall be performed in the following manner:

(a) The total number of names on the master list shall be divided by the number of names desired to be drawn. The whole number next greater than the resulting quotient shall be the "key number," except that the key number shall never be less than "two" (2).

(b) A "starting name" for making the selection shall then be determined by randomly choosing a number between "one" (1) and the "key number," inclusive.

(c) The required number of names shall then be selected beginning with the "starting name" selected as described above and proceeding to successive names appearing in the master list at intervals equal to the "key number," recommencing at the beginning of the list until the required number of names has been selected.

(d) Upon recommencing at the beginning of the list, or if additional names are subsequently ordered to be drawn from the master list,

names previously selected in the process described in (c) above shall be disregarded in selecting the additional name.

(e) An electronic or mechanical system may be used to draw names from the master list. [IC 33-4-5.5-9, as added by Acts 1973, P.L. 306, § 1.]

Cited: *Tawney v. State*, 439 N.E.2d 582 (Ind. 1982).

NOTES TO DECISIONS

ANALYSIS

Discrimination.

—Not found.

Discrimination.

—Not Found.

Where a black was seated as juror number four, but the court granted the state's challenge of her for cause when on voir dire she stated that she felt she could not be impartial, and the other black member of the venire was

seated as venireman number 19 and was not reached, in view of the mandate of subsection (d) of this section which requires that jurors be seated in the order in which their names were drawn and militates against rather than in favor of an opportunity for discrimination, it was held that the court committed no error in refusing to move venireman 19 forward on the panel when the first black was discharged for cause. *Wilder v. State*, 498 N.E.2d 1295 (Ind. App. 1986).

33-4-5.5-10. Juror qualification form — Contents — Procedure for completion and return — Penalties for noncompliance or misrepresentation. — (a)(1) Within one (1) calendar week after the date of the drawing of names from the master list, the jury commissioner shall cause to be mailed to each person whose name is drawn, a juror qualification form. The form shall be accompanied by instructions to fill out and return the form by mail to the jury commissioner within ten (10) days after its receipt. The instructions shall further state that requests for excuse from jury service during the next jury term should accompany return of the qualification form.

(2) The juror qualification form shall be designed by the jury commissioner and subject to approval by the court as to matters of content and shall elicit the name, address of residence, and age of the prospective juror and whether he is a citizen of the United States and a resident of the county, is able to read, speak, and understand the English language, has any physical or mental disability impairing his capacity to render satisfactory jury service, or has had rights revoked by reason of a felony conviction and not restored. The juror qualification form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge. Notarization of the juror qualification form shall not be required.

(3) If the prospective juror is unable to fill out the form, another person may do it for him and shall indicate that he has done so and the reason therefor.

(4) If it appears there is an omission, ambiguity, or error in a returned form, the jury commissioner shall again send the form, instructing the prospective juror to make the necessary addition, clarification, or

correction and to return the form to the jury commissioner within ten (10) days after its second receipt.

(5) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commissioner to appear forthwith before the jury commissioner to fill out a juror qualification form.

(6) At the time of his appearance for jury service, or at the time of any official conversation with the court or jury commissioner, any prospective juror may be required to fill out another juror qualification form in the presence of the court or jury commissioner. At this time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(b) A prospective juror who fails to appear as directed by the jury commissioner pursuant to subsection (a) of this section shall be ordered by the court to appear and show cause for his failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for his failure to appear as directed by the jury commissioner, he is guilty of criminal contempt.

(c) A person who knowingly misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror commits a Class C misdemeanor. [IC 33-4-5.5-10, as added by Acts 1973, P.L. 306, § 1; 1978, P.L. 2, § 3302.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

33-4-5.5-11. Disqualification — Grounds. — (a) The court or the jury commissioner shall determine solely on the basis of information provided on the juror qualification form or interview with the prospective juror whether or not the prospective juror is disqualified for jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form or electronic data processing facsimile and on the alphabetical list of names drawn from the master list.

(b) A prospective juror is disqualified to serve on a jury if he:

(1) Is not a citizen of the United States, eighteen (18) years old, and a resident of the county; or

(2) Is unable to read, speak, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; or

(3) Is incapable, by reasons of his physical or mental disability, of rendering satisfactory jury service. However, a person claiming this disqualification may be required to submit a physician's or authorized Christian Science practitioner's certificate as to the disability, and the certifying physician or practitioner is subject to inquiry by the court at its discretion; or

(4) Has had his rights revoked by reason of a felony conviction and not restored. [IC 33-4-5.5-11, as added by Acts 1973, P.L. 306, § 1.]

33-4-5.5-12. Jury wheel — Drawings for jury panels — Summons.

— (a) The jury commissioner shall maintain a qualified jury wheel and shall place in the jury wheel the names or identifying numbers of all prospective jurors drawn from the master list who are not disqualified or excused.

(b) A judge of any court or any other state or county official having the authority to conduct a trial or hearing with a jury within the county by order may direct the jury commissioner to draw and assign to that court or official the number of qualified jurors necessary for one (1) or more petit jury panels. Upon receipt of the order and in a manner prescribed in section 14 [IC 33-4-5.5-14] of this chapter, the jury commissioner shall publicly draw at random from the qualified jury wheel the number of qualified jurors required by the order and assign said qualified jurors so drawn to the court's jury panel.

(c) Upon receipt of an order for a grand jury, the jury commissioner shall publicly and in a manner prescribed in section 14 of this chapter, draw at random from the qualified jury wheel twelve (12) qualified jurors who shall be directed to appear before the chief judge. The chief judge shall randomly select six (6) jurors and one (1) alternate juror after having explained to the twelve (12) prospective jurors the duties and responsibilities of a grand jury and having excused jurors as prescribed in section 15 [IC 33-4-5.5-15] of this chapter.

(d) An alphabetic listing of grand and petit jurors assigned to each court location shall be maintained by the jury commissioner and a copy transmitted to the judge for whom the names have been drawn.

(e) If a grand, petit, or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons either personally or by registered or certified mail, return receipt requested, addressed to him at his usual residence, business, or post office address, requiring him to report for jury service at a specified time and place.

(f) Whenever there is an unanticipated shortage of available petit jurors drawn from a qualified jury wheel, the court may require the jury commissioner to:

- (1) draw additional jurors at random from the qualified jury wheel; or
- (2) send available jurors from another panel to the court location requiring additional jurors.

In no instance may talesmen be solicited from among bystanders or from any source except from among names drawn from the qualified jury wheel.

(g) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors shall not be made available to the public until the period of service of those jurors shall have expired, except that attorneys in any cases in which these jurors may serve, shall have access to the information. [IC 33-4-5.5-12, as added by Acts 1973, P.L. 306, § 1; P.L.1-1993, § 229; P.L.4-1998, § 7.]

33-4-5.5-13. Exemptions from jury service. — A qualified prospective juror is not exempt from jury service except for the following:

- (1) Members in active service of the Armed Forces of the United States who are actively engaged in the performance of their official duties.
- (2) Elected or appointed officials of the executive, legislative, or judicial branches of government of the:

- (A) United States;
- (B) State of Indiana; or
- (C) counties affected by this chapter;

who are actively engaged in the performance of their official duties.

- (3) A person who:

- (A) would serve as a juror during a criminal trial; and
- (B) is:

- (i) an employee of the department of correction whose duties require contact with inmates confined in a department of correction facility; or
 - (ii) the spouse or child of a person described in item (i);
- and desires to be excused for that reason. [IC 33-4-5.5-13, as added by Acts 1973, P.L. 306, § 1; P.L.4-1998, § 8.]

Cross References. Persons who may be excused, generally, IC 33-4-5-7.

33-4-5.5-14. Procedure for drawing from jury wheel. — The same method described in section 9 [IC 33-4-5.5-9] of this chapter for drawing names from the master list shall be followed for drawing names from the qualified wheel unless the names in the qualified wheel are not in some sequential order as described in section 9 of this chapter. Should the names be in the form of ballots or in some other form wherein they must be blindly drawn from a container by hand, the “key number” system shall not be necessary. [IC 33-4-5.5-14, as added by Acts 1973, P.L. 306, § 1; 1981, P.L. 272, § 26.]

33-4-5.5-15. Excuse from jury service. — (a) Except as provided in section 13 [IC 33-4-5.5-13] of this chapter, a person may not be automatically excused under this chapter. The chief judge or jury commissioner, upon request of a prospective juror, shall determine on the basis of information provided on the juror qualification form, correspondence from the prospective juror, or interview with the prospective juror whether the prospective juror should be excused from jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, or public necessity, until the time of the next drawing at which time he will be resummoned. Appropriate records shall be maintained by the jury commissioner to facilitate said resummoning.

(c) Requests for excuse, other than those accompanying return of the qualification form, shall be made by the prospective juror in writing to the Presiding Judge no later than three (3) weeks in advance of the date upon which he has been summoned to appear. [IC 33-4-5.5-15, as added by Acts 1973, P.L. 306, § 1; P.L.4-1998, § 9.]

NOTES TO DECISIONS

Discretion of Court.

Both by this section and by case law, the trial court has discretionary authority to ex-

cuse prospective jurors. *Hailey v. State*, 521 N.E.2d 1318 (Ind. 1988).

33-4-5.5-16. Motion to stay proceedings for noncompliance with jury law. — (a) Within seven (7) days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefore, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case, to dismiss the indictment (if the case has been brought by indictment) or stay the proceedings or for other appropriate relief, on the ground of substantial failure to comply with this chapter in selecting the prospective grand or petit jurors.

(b) Upon motion filed under subsection (a) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of the jury commissioner, any relevant records and papers not public or otherwise available used by the jury commissioner and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with this chapter, the court shall stay the proceedings pending the selection of the jury in conformity with this article, and may dismiss an indictment (if the instant case was brought by indictment) or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which the state, a person accused of an offense, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.

(d) The parties to the case may inspect, reproduce, and copy the records or papers of the jury commissioner at all reasonable times during the preparation and pendency of a motion under subsection (a) of this section. [IC 33-4-5.5-16, as added by Acts 1973, P.L. 306, § 1; 1977, P.L. 313, § 3.]

33-4-5.5-17. Records and papers. — After the period of service for which names were drawn from the master jury list has expired, and all persons elected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury commissioner or the clerk shall be preserved by the clerk for such period as shall be prescribed by rule of the Supreme Court and shall be available for public inspection at all reasonable times. [IC 33-4-5.5-17, as added by Acts 1973, P.L. 306, § 1.]

33-4-5.5-18. [Repealed.]

Compiler's Notes. This section, concerning the compensation of jurors, was repealed by P.L.58-1988, § 3, effective July 1, 1989.

For present law on juror compensation, see IC 33-19-1-4.

33-4-5.5-19. Limitation on jury service. — In any one (1) year period, a person shall not be eligible or required to be available for service as a petit

or grand juror for more than one term of service, except when necessary to complete service in a particular case. The term of service shall be three (3) months unless a shorter jury term is ordered by the chief judge due to a sustained increase in frequency or length of jury trials which would result in a requirement for jurors to be present at court more than ten (10) court days during the quarter, except as necessary to complete service in a particular case. [IC 33-4-5.5-19, as added by Acts 1973, P.L. 306, § 1.]

33-4-5.5-20. Failure to appear for jury service — Penalty. — A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for noncompliance with the summons, he is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars (\$100) or imprisoned in the county jail not more than three (3) days, or both. [IC 33-4-5.5-20, as added by Acts 1973, P.L. 306, § 1.]

33-4-5.5-21. [Repealed.]

Compiler’s Notes. This section, which prohibited an employer from interfering with an employee called as a juror, and which provided for civil actions against such employers, was repealed by Acts 1978, P.L. 2,

§ 3308. For present provisions, see IC 34-28-4-1 (civil action against employer), IC 35-44-3-4 (tampering with jury), and IC 35-44-3-10 (interference with jury service).

33-4-5.5-22. Rules. — The Supreme Court may make and amend rules, not inconsistent with this chapter, regulating the selection and service of jurors. [IC 33-4-5.5-22, as added by Acts 1973, P.L. 306, § 1.]

CHAPTER 5.6

PORTER CIRCUIT AND SUPERIOR COURT JURY SELECTION AND SERVICE

33-4-5.6-1 — 33-4-5.6-28. [Repealed.]

Compiler’s Notes. This chapter, concerning selection and service of Porter Circuit and Superior Court juries, was repealed by P.L.4-1998, § 15, effective July 1, 1998. For present similar provisions, see IC 33-4-11-1 et seq.

IC 33-4-5.6-20 was amended by P.L.4-1998, § 10, effective July 1, 1998. Because of the repeal of this chapter, the amendment is not set out.

CHAPTER 6

SHELBY CIRCUIT COURT

SECTION.

- 33-4-6-1. Term of court to be calendar year.
- 33-4-6-2. Jurisdiction.

33-4-6-1. Term of court to be calendar year. — The terms of the Shelby Circuit Court shall be coincident and coextensive with the respective calendar years and each calendar year shall be and constitute a term of said court, as provided in IC 33-1-6. In the event of any subsequent amendment,

repeal or replacement of IC 33-1-6 by the General Assembly or by rules of the Supreme Court of Indiana, the terms of the Shelby Circuit Court shall conform to such subsequent legislation or court rule, as the case may be. [Acts 1969, ch. 114, § 1; 1981, P.L. 272, § 27.]

33-4-6-2. Jurisdiction. — (a) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the Shelby superior court in the following:

- (1) All civil actions and proceedings, at law or in equity.
- (2) Divorce and special statutory proceedings and actions.
- (3) Probate matters and proceedings.
- (4) Actions by and against administrators, executors, guardians, trustees, and other fiduciaries and personal representatives, including will contests, actions to resist probate of wills, and claims against estates.
- (5) Criminal proceedings, actions and matters.

(b) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the Shelby superior court in all actions and proceedings, at law or in equity, whether criminal, civil, divorce, or other statutory matters, that are venued from other counties and from any courts in other counties in Indiana.

(c) The Shelby circuit court does not have jurisdiction to file, hear, and determine juvenile proceedings or actions or other matters cognizable in the juvenile courts in Indiana. All juvenile jurisdiction is vested exclusively in the Shelby superior court.

(d) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the superior court of the county in all civil, criminal, and statutory actions and proceedings appealed from the board of commissioners, and any other board, inferior court, commission, agency, or officer in the county.

(e) In the exercise of its criminal jurisdiction, the circuit court may issue search warrants and warrants for arrest and any other legal process and find and determine all matters and facts necessary to the validity of warrants or other process under the Constitution of the United States, the Constitution of the State of Indiana, and the laws of this state.

(f) The circuit court has concurrent and coextensive jurisdiction with the superior court in any and all other matters, proceedings, acts, powers, and duties that are proper to be filed, tried, and determined in circuit courts and superior courts of general jurisdiction and are not specifically mentioned in this section. [Acts 1969, ch. 114, § 2; P.L.1-1990, § 318.]

CHAPTER 7

MAGISTRATES

SECTION.

33-4-7-1. Applicability of chapter.

33-4-7-2. Admission to practice of law required.

33-4-7-3. Engaging in practice of law prohibited.

SECTION.

33-4-7-4. Powers.

33-4-7-5. Service as judge pro tempore or special judge.

33-4-7-6. Administrative duties.

33-4-7-7. No power of judicial mandate.

SECTION.

33-4-7-8. Report of findings in evidentiary hearing, trial, or jury's verdict to court.

33-4-7-9. [Repealed.]

33-4-7-9.1. Salary of magistrate.

SECTION.

33-4-7-10. Payment of salary generally.

33-4-7-11. Payment of salary of magistrate appointed under IC 31-31-3-2.

33-4-7-12. Participation in retirement fund.

33-4-7-1. Applicability of chapter. — This chapter applies to a court expressly authorized by statute to appoint a full-time magistrate. [P.L.334-1989(ss), § 10.]

NOTES TO DECISIONS

Appointment Proper.

A magistrate, who was appointed by order of the Monroe Circuit Court in 1989 by a judge who retired effective December 31, 1992, after the Monroe County courts had

been reorganized, was serving as a properly appointed magistrate when she issued a search warrant on January 3, 1993. *Dike v. State*, 642 N.E.2d 281 (Ind. App. 1994).

33-4-7-2. Admission to practice of law required. — A magistrate must be admitted to the practice of law in Indiana. [P.L.334-1989(ss), § 10.]

33-4-7-3. Engaging in practice of law prohibited. — A magistrate may not engage in the practice of law while holding the office of magistrate. [P.L.334-1989(ss), § 10.]

33-4-7-4. Powers. — A magistrate may do any of the following:

- (1) Administer an oath or affirmation required by law.
- (2) Solemnize a marriage.
- (3) Take and certify an affidavit or deposition.
- (4) Order that a subpoena be issued in a matter pending before the court.
- (5) Compel the attendance of a witness.
- (6) Punish contempt.
- (7) Issue a warrant.
- (8) Set bail.
- (9) Enforce court rules.
- (10) Conduct a preliminary, initial, omnibus, or other pretrial hearing.
- (11) Conduct an evidentiary hearing or trial.
- (12) Receive a jury's verdict.
- (13) Verify a certificate for the authentication of records of a proceeding conducted by the magistrate.
- (14) Enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense as described under section 8 [IC 33-4-7-8] of this chapter. [P.L.334-1989(ss), § 10; P.L.164-1993, § 2.]

NOTES TO DECISIONS

ANALYSIS

In general.

Contempt power.
Jury selection.
Motions for mistrial.

Motions in limine.
Presiding at hearings or trials.

In General.

A commissioner acts as an instrumentality to inform and assist the court; only the court has authority to make final orders or judgments. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

The decision of a commissioner is a nullity from which no appeal can be taken. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

Contempt Power.

Master commissioner of the Marion Superior Title IV-D Court, appointed by the Marion County Superior Court, had authority to find father in contempt of court for failure to pay child support. *Moore v. Liggins*, 685 N.E.2d 57 (Ind. App. 1997).

Jury Selection.

A master commissioner was within the permissible boundaries of IC 33-4-7-4 and IC 33-4-7-7 in presiding over jury selection and swearing in the jury. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Motions for Mistrial.

The power to rule upon motions for mistrial is inherent in the power to conduct trials

unless such action is statutorily prohibited. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Motions in Limine.

A master commissioner acted within the authority granted in this section in ruling upon the state's motions in limine. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Presiding at Hearings or Trials.

A master commissioner acts as an instrumentality to inform and assist the court. Consistent with that purpose, a master commissioner is authorized to conduct trials. Inherent in the power to conduct trials is the power to perform duties that one who presides over such proceedings is customarily called upon to perform. So long as a master commissioner does not act in a manner which is in conflict with the prohibitions in IC 33-4-7-7, he or she may perform duties necessary to effectively preside at hearings and trials. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Master commissioner of Supreme Court has the same powers and duties as are prescribed by statute for a magistrate; therefore, commissioner did have the authority to try defendant for burglary and theft. *Scruggs v. State*, 637 N.E.2d 175 (Ind. App. 1994).

33-4-7-5. Service as judge pro tempore or special judge. — A magistrate may serve as a judge pro tempore or as a special judge of the court. A magistrate is not entitled to additional compensation for service under this section. [P.L.334-1989(ss), § 10.]

33-4-7-6. Administrative duties. — The court may assign a magistrate administrative duties that are consistent with this chapter. [P.L.334-1989(ss), § 10.]

33-4-7-7. No power of judicial mandate. — Except as provided under section 8(b) [IC 33-4-7-8(b)] of this chapter, a magistrate:

- (1) Does not have the power of judicial mandate; and
- (2) May not enter a final appealable order unless sitting as a judge pro tempore or a special judge. [P.L.334-1989(ss), § 10; P.L.164-1993, § 3.]

Cited: *Pitman v. State*, 635 N.E.2d 1098 (Ind. App. 1994).

NOTES TO DECISIONS

ANALYSIS

Authority.
—Master commissioner.
Jury selection.
Motions for mistrial.
Motions in limine.

Presiding at hearings or trials.

Authority.

The authority to decide is a judicial power which cannot, consistent with the Indiana Constitution, be delegated to the magistrate, but the instrumentalities used to inform the

Authority. (Cont'd)

court, whether left to the court's own choice or fixed by law, are merely auxiliary to that power and operate upon persons or things only through the court's actions. *Mid-West Fed. Sav. Bank v. Epperson*, 579 N.E.2d 124 (Ind. App. 1991).

—Master Commissioner.

Since the regular judge did not execute an abstract of the judgment, or duly appoint a master commissioner as special judge or judge pro tempore, and since the master commissioner presided throughout the proceedings, then no valid final judgment had been entered, the appeal was premature, and the defendant was ordered released from the custody of the Department of Corrections and returned to the custody of the sheriff. *Rivera v. State*, 601 N.E.2d 445 (Ind. App. 1992).

The appointment of a master commissioner as special judge nearly a year after he had presided over the trial, designed as a curative measure to salvage an appeal by the defendant sentenced by the commission, failed because there was no written memoranda, note, or other memorial of record which demonstrated that the master had served in any capacity other than master commissioner. *Richardson v. State*, 602 N.E.2d 178 (Ind. App. 1992).

A defendant convicted of robbery and adjudicated as an habitual offender was released from the custody of the Department of Corrections and returned to the custody of the sheriff since a master commissioner had not been appointed as special judge under the provisions of Rule C.R. 13 and thus had no authority to enter judgment on the verdict nor did he have authority to conduct the sentencing hearing. *Richardson v. State*, 602 N.E.2d 178 (Ind. App. 1992).

33-4-7-8. Report of findings in evidentiary hearing, trial, or jury's verdict to court. — (a) Except as provided under subsection (b), a magistrate shall report findings in an evidentiary hearing, a trial, or a jury's verdict to the court. The court shall enter the final order.

(b) If a magistrate presides at a criminal trial, the magistrate may do the following:

- (1) Enter a final order.
- (2) Conduct a sentencing hearing.
- (3) Impose a sentence on a person convicted of a criminal offense.

[P.L.334-1989(ss), § 10; P.L.164-1993, § 4.]

Res Gestae. Rules, rulings for the trial lawyer, 37 *Res Gestae* 518 (1994).

Cited: *Walls v. State*, 603 N.E.2d 903 (Ind.

A master commissioner has the same powers and duties as are prescribed by statute for a magistrate. Dearman v. State, 632 N.E.2d 1156 (Ind. App. 1994).

Jury Selection.

A master commissioner was within the permissible boundaries of IC 33-4-7-4 and IC 33-4-7-7 in presiding over jury selection and swearing in the jury. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Motions for Mistrial.

The power to rule upon motions for mistrial is inherent in the power to conduct trials unless such action is statutorily prohibited. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Motions in Limine.

A master commissioner acted within the authority granted in IC 33-4-7-4 in ruling upon the state's motions in limine. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

Presiding at Hearings or Trials.

A master commissioner acts as an instrumentality to inform and assist the court. Consistent with that purpose, a master commissioner is authorized to conduct trials. Inherent in the power to conduct trials is the power to perform duties that one who presides over such proceedings is customarily called upon to perform. So long as a master commissioner does not act in a manner which is in conflict with the prohibitions in this section, he or she may perform duties necessary to effectively preside at hearings and trials. *Barker v. State*, 622 N.E.2d 1329 (Ind. App. 1993).

App. 1992); *Pitman v. State*, 635 N.E.2d 1098 (Ind. App. 1994).

NOTES TO DECISIONS

ANALYSIS

In general.
Adoption of report of findings.
Authority.
Conduct of hearing.
Powers.

In General.

A commissioner acts as an instrumentality to inform and assist the court; only the court has authority to make final orders or judgments. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

The decision of a commissioner is a nullity from which no appeal can be taken. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

Adoption of Report of Findings.

Where, following his first appeal, defendant appeared before the regular judge of the superior court for a resentencing hearing, judge acted within his discretion at that hearing in adopting master commissioner's findings of fact and sentencing recommendations. *Scruggs v. State*, 637 N.E.2d 175 (Ind. App. 1994).

Authority.

Since the regular judge did not execute an abstract of the judgment, or duly appoint a master commissioner as special judge or judge pro tempore, and since the master commissioner presided throughout the proceedings, then no valid final judgment had been entered, the appeal was premature, and the

defendant was ordered released from the custody of the Department of Corrections and returned to the custody of the sheriff. *Rivera v. State*, 601 N.E.2d 445 (Ind. App. 1992).

A defendant convicted of robbery and adjudicated as an habitual offender was released from the custody of the Department of Corrections and returned to the custody of the sheriff since a master commissioner had not been appointed as special judge under the provisions of Rule C.R. 13 and thus had no authority to enter judgment on the verdict nor did he have authority to conduct the sentencing hearing. *Richardson v. State*, 602 N.E.2d 178 (Ind. App. 1992).

Conduct of Hearing.

Where sentencing hearing was erroneously conducted by a master commissioner, the master commissioner and the duly qualified judge could not retroactively remedy the error by a nunc pro tunc recommendation of the master commissioner concerning a judgment of sentence and a nunc pro tunc order thereon by the duly qualified judge; only remedy was for the judge to perform his required duty of conducting the hearing. *Beitz v. State*, 607 N.E.2d 974 (Ind. App. 1993).

Powers.

Master commissioner had the authority to enter a final order on petition for revocation of probation regardless of parties' consent to the appointment of commissioner as special judge. *Offringa v. State*, 637 N.E.2d 190 (Ind. App. 1994).

33-4-7-9. [Repealed.]

Compiler's Notes. This section, concerning magistrates' salaries, was repealed by P.L.280-1995, § 25, effective August 1, 1997.

For present similar provisions, see IC 33-4-7-9.1.

33-4-7-9.1. Salary of magistrate. — A magistrate is entitled to an annual salary equal to eighty percent (80%) of the salary of a judge under IC 33-13-12-7.1. [P.L.280-1995, § 2.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 2 provided that this section take effect August 1, 1997.

33-4-7-10. Payment of salary generally. — Except as provided in section 11 [IC 33-4-7-11] of this chapter, the state shall pay the salary of a magistrate. A county located in the circuit that the magistrate serves may supplement the magistrate's salary. [P.L.334-1989(ss), § 10.]

33-4-7-11. Payment of salary of magistrate appointed under IC 31-31-3-2. — The salary of a magistrate appointed under IC 31-31-3-2 shall be paid in accordance with IC 33-13-12-8.2. [P.L.334-1989(ss), § 10; P.L.1-1997, § 122.]

33-4-7-12. Participation in retirement fund. — A magistrate may:

- (1) Participate in the public employees' retirement fund as provided in IC 5-10.3; or
- (2) Elect to remain in the judges' retirement system under IC 33-13 if the magistrate had previously participated in the system. [P.L.334-1989(ss), § 10.]

CHAPTER 8

SENIOR JUDGES

SECTION.

33-4-8-1. Application for appointment of senior judge to serve.

33-4-8-2. Appointment of senior judge.

33-4-8-3. Jurisdiction — Length and scope of service.

SECTION.

33-4-8-4. Acceptance of assignment not mandatory.

33-4-8-5. Compensation.

33-4-8-1. Application for appointment of senior judge to serve. —

(a) A circuit court may apply to the supreme court for the appointment of a senior judge to serve the court.

(b) A superior court, a county court, a probate court, or the court of appeals may apply to the supreme court for the appointment of a senior judge to serve the court.

(c) The application submitted under this section must include the following:

(1) Reasons for the request.

(2) Estimated duration of the need for a senior judge.

[P.L.334-1989(ss), § 11; P.L.40-1990, § 8; P.L.33-1998, § 1.]

NOTES TO DECISIONS

ANALYSIS

Order.
—Proper.

Order.

—Proper.

The Order of Appointment appointing a

Senior Judge was made in accordance with subsections (b) and (c) of this section and IC 33-2-1-8. *Becker v. State*, 646 N.E.2d 978 (Ind. App. 1995).

33-4-8-2. Appointment of senior judge. — Upon approving the request by a circuit court, a superior court, a county court, a probate court, or the court of appeals for a senior judge, the supreme court may appoint a senior judge to serve that court for the duration specified in the application submitted under section 1 [IC 33-4-8-1] of this chapter. [P.L.334-1989(ss), § 11; P.L.40-1990, § 9; P.L.33-1998, § 2.]

33-4-8-3. Jurisdiction — Length and scope of service. — A senior judge:

- (1) Exercises the jurisdiction granted to the court served by the senior judge;
- (2) Serves at the pleasure of the supreme court; and
- (3) Serves in accordance with rules adopted by the supreme court under IC 33-2-1-8. [P.L.334-1989(ss), § 11; P.L.40-1990, § 10.]

33-4-8-4. Acceptance of assignment not mandatory. — The supreme court may not require a senior judge to accept an assignment to serve a circuit court, a superior court, a county court, a probate court, or the court of appeals. If a senior judge declines an assignment to serve, the supreme court may offer the senior judge subsequent assignments to serve a circuit court, a superior court, a county court, a probate court, or the court of appeals. [P.L.334-1989(ss), § 4; P.L.40-1990, § 11; P.L.33-1998, § 3.]

33-4-8-5. Compensation. — (a) A senior judge is entitled to:

- (1) A per diem of fifty dollars (\$50); and
 - (2) Reimbursement for:
 - (A) Mileage; and
 - (B) Reasonable expenses, including but not limited to meals and lodging, incurred in performing service as a senior judge;
- for each day served as a senior judge.

(b) The per diem and reimbursement for mileage and reasonable expenses under subsection (a) shall be paid by the state.

(c) A senior judge appointed under this chapter may not be compensated as a senior judge for more than one hundred (100) calendar days in the aggregate during a calendar year. [P.L.334-1989(ss), § 11; P.L.40-1990, § 12; P.L.207-1991, § 3; P.L.18-1995, § 21.]

CHAPTER 10

MONROE CIRCUIT COURT

SECTION.

- 33-4-10-1. Jurisdiction and dockets.
 33-4-10-2. [Repealed.]
 33-4-10-3. Selection of presiding judge.
 33-4-10-4. Action by entire court — Decisions.

SECTION.

- 33-4-10-5. Duties of presiding judge.
 33-4-10-6. Rules for administration of court.
 33-4-10-7. Administrative personnel.
 33-4-10-8. Court administrator.

33-4-10-1. Jurisdiction and dockets. — (a) The Monroe circuit court is a court of general jurisdiction and shall maintain the following dockets:

- (1) Small claims.
- (2) Minor offenses and violations.
- (3) Criminal.
- (4) Juvenile.
- (5) Civil.
- (6) Probate.

(b) The assignment of judges of the court to the dockets specified in subsection (a) shall be by rule of the court. [P.L.40-1990, § 13.]

Compiler's Notes. There is no Chapter IC 33-4-9 in this article.

Effective Dates. P.L.40-1990, § 71, de-

clared an emergency and provided that the chapter take effect January 1, 1991.

33-4-10-2. [Repealed.]

Compiler's Notes. This section, concerning the appointment of magistrates in Monroe

County, was repealed by P.L.18-1995, § 114, effective July 1, 1995.

33-4-10-3. Selection of presiding judge. — The judges of the Monroe circuit court shall select from among themselves a presiding judge of the court. [P.L.40-1990, § 13.]

33-4-10-4. Action by entire court — Decisions. — Whenever any action of the entire court is required, including selection of a presiding judge under section 3 [IC 33-4-10-3] of this chapter and adoption of rules under section 6 [IC 33-4-10-6] of this chapter, then the judges of the court will act in concert. If the judges disagree, the decision of the majority of the judges shall control. If the judges are evenly divided, the decision joined by the presiding judge shall control. [P.L.40-1990, § 13.]

33-4-10-5. Duties of presiding judge. — In accordance with rules adopted by the judges of the court under section 6 [IC 33-4-10-6] of this chapter, the presiding judge shall do the following:

(1) Ensure that the court operates efficiently and judicially under rules adopted by the court.

(2) Annually submit to the fiscal body of Monroe County a budget for the court, including amounts necessary for:

(A) The operation of the circuit's probation department;

(B) The defense of indigents; and

(C) Maintaining an adequate law library.

(3) Make the appointments or selections required of a circuit or superior court judge under the following statutes:

IC 8-4-21-2

IC 11-12-2-2

IC 16-22-2-4

IC 16-22-2-11

IC 16-22-7

IC 20-4-1

IC 20-4-8

IC 20-4-15-2

IC 20-5-20-4

IC 20-5-23-1

IC 20-14-10-10

IC 21-5-11-8

IC 21-5-12-8

IC 36-9

IC 36-10.

(4) Make appointments or selections required of a circuit or superior court judge by any other statute, if the appointment or selection is not

required of the court because of an action before the court. [P.L.40-1990, § 13; P.L.2-1993, § 165.]

33-4-10-6. Rules for administration of court. — (a) The judges of the court shall adopt rules to provide for the administration of the court, including rules governing the following:

- (1) Allocation of case load.
- (2) Legal representation for indigents.
- (3) Budgetary matters of the court.
- (4) Operation of the probation department.
- (5) Term of administration of the presiding judge.
- (6) Employment and management of court personnel.
- (7) Cooperative efforts with other courts for establishing and administering shared programs and facilities.

(b) The court shall file with the division of state court administration a copy of the rules adopted under this section. [P.L.40-1990, § 13.]

33-4-10-7. Administrative personnel. — (a) Each judge of the court may, subject to the budget approved for the court by the fiscal body of Monroe County, employ personnel necessary for the proper administration of the court.

(b) Personnel employed under this section:

- (1) Include court reporters, bailiffs, clerical staff, and any additional officers necessary for the proper administration of the court; and
- (2) Are subject to the rules concerning employment and management of court personnel adopted by the court under section 6 [IC 33-4-10-6] of this chapter. [P.L.40-1990, § 13.]

33-4-10-8. Court administrator. — (a) The court may appoint a court administrator subject to the budget approved for the court by the fiscal body of Monroe County.

(b) A court administrator appointed under this section is subject to the rules concerning employment and management of court personnel adopted by the court under section 6 [IC 33-4-10-6] of this chapter. [P.L.40-1990, § 13.]

CHAPTER 11

CIRCUIT AND SUPERIOR COURT JURY SELECTION AND SERVICE

SECTION.

- 33-4-11-1. "Courts" defined.
- 33-4-11-2. "Juror qualification form" defined.
- 33-4-11-3. "Jury commissioner" defined.
- 33-4-11-4. "Jury wheel" defined.
- 33-4-11-5. "Master list" defined.
- 33-4-11-6. "Qualified jury wheel" defined.
- 33-4-11-7. "Supervising judge" defined.
- 33-4-11-8. "Voter registration lists" defined.
- 33-4-11-9. Uniform system of jury selection required.
- 33-4-11-10. Selection of jurors — Duties of

SECTION.

- supervising judge.
- 33-4-11-11. Court administrator to serve as jury commissioner.
- 33-4-11-12. Written plan for selection of grand and petit jurors.
- 33-4-11-13. Master list — Compilation and maintenance — Supplemental lists — Public record.
- 33-4-11-14. Drawing names for juror service.
- 33-4-11-15. Random drawing of names.
- 33-4-11-16. Juror qualification form.

SECTION.

- 33-4-11-17. Failure to appear — Criminal contempt — Misrepresentation of material fact on juror qualification form.
- 33-4-11-18. Disqualification for jury service — Request for excuse.
- 33-4-11-19. Qualified jury wheel — Selection of qualified prospective jurors — Grand jury — Petit jury.
- 33-4-11-20. Drawing names from qualified jury wheel.

SECTION.

- 33-4-11-21. Proceedings relating to substantial failure to comply with chapter.
- 33-4-11-22. Preservation of records and papers.
- 33-4-11-23. Length of jury service — Selection for subsequent jury panel.
- 33-4-11-24. Failure to appear or complete jury service.
- 33-4-11-25. Adoption of rules.

33-4-11-1. “Courts” defined. — As used in this chapter, “courts” means the circuit and superior courts of a county that chooses to follow the procedure for jury selection and service set out in this chapter. [P.L.4-1998, § 11.]

33-4-11-2. “Juror qualification form” defined. — As used in this chapter, “juror qualification form” means the form prescribed for use by the courts and mailed to each prospective juror, or an electronic data processing facsimile of that form such as might be created on magnetic tape, punched cards, or computer discs. [P.L.4-1998, § 11.]

33-4-11-3. “Jury commissioner” defined. — As used in this chapter, “jury commissioner” means the court administrator or the clerk of the court and includes a deputy court administrator designated by the jury commissioner from time to time to act in the jury commissioner’s place. [P.L.4-1998, § 11.]

33-4-11-4. “Jury wheel” defined. — As used in this chapter, “jury wheel” means any list, physical device, or electronic system for the storage of the names or identifying numbers of prospective jurors. [P.L.4-1998, § 11.]

33-4-11-5. “Master list” defined. — As used in this chapter, “master list” means:

- (1) a serially printed list;
- (2) a magnetic tape;
- (3) an addressograph file;
- (4) a punched card file;
- (5) a computer record; or
- (6) another form of record determined by the supervising judge to be consistent with this chapter;

that fosters the policy and protects the rights secured by this chapter and that contains all current, up-to-date voter registration lists for each precinct in the county and that is supplemented by names derived from other sources identified under this chapter. [P.L.4-1998, § 11.]

33-4-11-6. “Qualified jury wheel” defined. — As used in this chapter, “qualified jury wheel” means the jury wheel in which there are placed the

names or identifying numbers of prospective jurors drawn at random from the master list and who are not disqualified. [P.L.4-1998, § 11.]

33-4-11-7. “Supervising judge” defined. — As used in this chapter, “supervising judge” means a judge of the courts who is designated by the judges of the courts to supervise the jury selection process. [P.L.4-1998, § 11.]

33-4-11-8. “Voter registration lists” defined. — As used in this chapter, “voter registration lists” means the official records of persons registered to vote. [P.L.4-1998, § 11.]

33-4-11-9. Uniform system of jury selection required. — The jury commissioner and supervising judge under the plan required by section 13 [IC 33-4-11-13] of this chapter shall provide a uniform system of jury selection for the courts ensuring that:

- (1) persons selected for jury service are selected at random from a fair cross section of the population of the area served by the courts; and
- (2) qualified citizens have the opportunity under this chapter to:
 - (A) be considered for jury service in the county; and
 - (B) fulfill their obligation to serve as jurors when summoned for that purpose. [P.L.4-1998, § 11.]

33-4-11-10. Selection of jurors — Duties of supervising judge. — (a) The supervising judge is responsible for the selection of jurors as prescribed by this section.

(b) The supervising judge may authorize use of a computerized jury selection system under this chapter. However, a system authorized under this subsection must be fair and may not violate the rights of persons with respect to impartial and random selection of prospective jurors. Jurors selected under a computerized selection system must be eligible for selection under this chapter. [P.L.4-1998, § 11.]

33-4-11-11. Court administrator to serve as jury commissioner. — (a) The court administrator shall serve as the jury commissioner for the county, and has the powers and shall perform the duties prescribed in this chapter for the jury commissioner, under the direction of the supervising judge.

(b) The court administrator, when acting as jury commissioner, may not receive any compensation in addition to the court administrator’s regular salary.

(c) Certain duties of the jury commissioner may be delegated by the court administrator to a deputy court administrator with the approval of the supervising judge. [P.L.4-1998, § 11.]

33-4-11-12. Written plan for selection of grand and petit jurors. — (a) The jury commissioner, under the supervision of the supervising judge, shall prepare a written plan for the selection of grand and petit jurors in the

county. The plan must be designed to achieve the objectives of, and otherwise comply with, this chapter. The plan must specify the:

- (1) source of names for the master list;
- (2) form of the master list;
- (3) method of selecting names from the master list;
- (4) forms of and method for maintaining records of names drawn, jurors qualified, and juror's excuses and reasons to be excused;
- (5) method of drawing names of qualified jurors for prospective service;
- (6) procedures to be followed by prospective jurors in requesting to be excused from jury service; and
- (7) number of petit jurors that constitutes a panel for civil and criminal cases or a description of the uniform manner in which this determination is made.

(b) The plan must be placed into operation after approval by the judges of the courts. The judges of the courts shall examine the plan to determine whether it complies with this chapter. If the plan is found not to comply, the court shall order the jury commissioner to make the necessary changes to bring the plan into compliance.

(c) The plan may be modified at any time according to the procedure specified under this chapter.

(d) The plan must be submitted by the jury commissioner to the judges of the courts. The judges of the courts shall approve or direct modification of the plan not later than sixty (60) days after its receipt. The approved plan must go into effect not later than sixty (60) days after approval by the judges of the courts.

(e) The plan is a public document on file in the office of the jury commissioner and must be available for inspection at all reasonable times. [P.L.4-1998, § 11.]

33-4-11-13. Master list — Compilation and maintenance — Supplemental lists — Public record. — (a) The jury commissioner shall compile and maintain a master list consisting of all the voter registration lists for the county, supplemented with names from other lists of persons resident in the county that the Indiana supreme court shall from time to time designate as necessary to obtain the broadest cross section of the county, having determined that use of supplemental lists is feasible. The Indiana supreme court may designate supplemental lists for use by the courts from time to time in a manner that fosters the policy and protects the rights secured by this chapter. Supplemental sources may consist of lists of utility customers, property taxpayers, persons filing income tax returns, motor vehicle registrations, city directories, telephone directories, and driver's licenses. Supplemental lists may not be substituted for the voter registration list. In drawing names from supplemental lists, the jury commissioner shall avoid duplication of names.

(b) Whoever has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection (a) by the Indiana supreme court as supplementary sources of names, shall furnish the master list to the jury commissioner for inspection, reproduction, and copying at all reasonable times.

(c) When a copy of a list maintained by a public official is furnished, only the actual cost of the copy may be charged to the courts.

(d) The master list of names is open to the public for examination as a public record. However, the source of names and any information other than the names contained in the source is confidential. [P.L.4-1998, § 11.]

33-4-11-14. Drawing names for juror service. — (a) Names must be drawn for juror service quarterly, based on a calendar year commencing in January. A public drawing of names for the next quarter must be held during the first week of the second month of the quarter next preceding that for which names are being drawn, at a time and place prescribed by the jury commissioner.

(b) The jury commissioner shall create and file an alphabetical list of names drawn under this section. The alphabetical list may be in the form of a serial listing or discreet records (such as punched cards, addressograph plates, or computer records) filed together to constitute the alphabetical list. Names may not be added to the alphabetical list, except by order of the court. Neither the names drawn nor any list compiled from the alphabetical list may be disclosed to any person other than under this chapter or by order of the supervising judge.

(c) The number of names required to be drawn each quarter must be determined by the jury commissioner after consultation with all judges of the courts who may conduct jury trials during the quarter, taking into consideration the number of jurors required for the grand jury.

(d) The frequency of the drawing of names may be increased by the jury commissioner if the jury commissioner determines it necessary for purposes of fairness, efficiency, or to ensure compliance with this chapter.

(e) Names must be drawn randomly under section 16 [IC 33-4-11-16] of this chapter.

(f) Names drawn from the master list may not be returned to the master list until all nonexempt persons on the master list have been called. [P.L.4-1998, § 11.]

33-4-11-15. Random drawing of names. — Assuming the master list contains names in some sequential order, such as an alphabetical or a numeric sequence, the drawing of names from the master list must be performed in the following manner:

(1) The total number of names on the master list is divided by the number of names to be drawn. The next whole number greater than the resulting quotient is the key number, except that the key number is never less than two (2).

(2) A starting name for making the selection is determined by randomly choosing a number between one (1) and the key number, inclusive.

(3) The required number of names is selected beginning with the starting name selected under subdivision (2) and proceeding to successive names appearing in the master list at intervals equal to the key number, recommencing at the beginning of the list until the required number of names is selected.

(4) Upon recommencing at the beginning of the list, or if additional names are subsequently ordered to be drawn from the master list, names previously selected in the process described in subdivision (3) must be disregarded in selecting the additional names.

(5) An electronic or a mechanical system may be used to draw names from the master list. [P.L.4-1998, § 11.]

33-4-11-16. Juror qualification form. — (a) Not later than seven (7) days after the date of the drawing of names from the master list, the jury commissioner shall mail to each person whose name is drawn a juror qualification form. The form must be accompanied by instructions to fill out and return the form by mail to the jury commissioner not later than ten (10) days after its receipt. The instructions must state that requests for excuse from jury service during the next jury term should accompany the return of the qualification form.

(b) The juror qualification form must be designed by the jury commissioner and subject to approval by the judges of the courts as to matters of content and must elicit:

(1) the prospective juror's name, address of residence, and age; and

(2) whether the prospective juror:

(A) is a citizen of the United States and a resident of the county;

(B) is able to read, speak, and understand the English language;

(C) has any physical or mental disability impairing the person's capacity to render satisfactory jury service; or

(D) has had rights revoked by reason of a felony conviction and not restored.

The juror qualification form must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge. Notarization of the juror qualification form is not required.

(c) If a prospective juror is unable to fill out the form, another person may fill out the form for the prospective juror. If the form is completed by a person other than a prospective juror, the form must indicate that another person has done so and the reason for doing so.

(d) If it appears there is an omission, ambiguity, or error in a returned form, the jury commissioner shall resend the form, instructing the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner not later than ten (10) days after its second receipt.

(e) A prospective juror who fails to return a completed juror qualification form as instructed must be directed by the jury commissioner to immediately appear before the jury commissioner to fill out a juror qualification form.

(f) When a prospective juror appears for jury service, or when there is an official conversation with the supervising judge or jury commissioner, a prospective juror may be required to fill out another juror qualification form in the presence of the supervising judge or jury commissioner. At this time, the prospective juror may be questioned, but only with regard to responses to questions contained on the form and grounds for the prospective juror's

excuse or disqualification. Information acquired under this subsection by the supervising judge or jury commissioner must be noted on the juror qualification form. [P.L.4-1998, § 11.]

33-4-11-17. Failure to appear — Criminal contempt — Misrepresentation of material fact on juror qualification form. — (a) A prospective juror who fails to appear as directed by the jury commissioner under section 16 [IC 33-4-11-16] of this section must be ordered by the supervising judge to appear and show cause for the failure to appear as directed. If the prospective juror fails to appear under the supervising judge's order or fails to show good cause for the failure to appear as directed by the jury commissioner, the prospective juror is guilty of criminal contempt.

(b) A person who knowingly misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror commits a Class C misdemeanor. [P.L.4-1998, § 11.]

33-4-11-18. Disqualification for jury service — Request for excuse. — (a) The supervising judge or the jury commissioner shall determine solely on the basis of information provided on a juror qualification form or interview with a prospective juror whether the prospective juror is disqualified for jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form or electronic data processing facsimile and on the alphabetical list of names drawn from the master list.

(b) A person may not be automatically excused under this chapter. The supervising judge or jury commissioner, upon request of a prospective juror, shall determine on the basis of information provided on the juror qualification form, correspondence from the prospective juror, or an interview with the prospective juror whether the prospective juror may be excused from jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form.

(c) A person who is not disqualified for jury service may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, or public necessity, until the time of the next drawing when the person is resummoned. Appropriate records must be maintained by the jury commissioner to facilitate resummoning.

(d) Requests for excuse, other than those accompanying the return of the qualification form, must be made by the prospective juror in writing to the jury commissioner not later than three (3) days before the date when the prospective juror has been summoned to appear. [P.L.4-1998, § 11.]

33-4-11-19. Qualified jury wheel — Selection of qualified prospective jurors — Grand jury — Petit jury. — (a) The jury commissioner shall maintain a qualified jury wheel and shall place in the jury wheel the names or identifying numbers of all prospective jurors drawn from the master list who are not disqualified or excused.

(b) The judges of the courts shall, by local court rule, specify the procedure to be used for the selection of qualified prospective jurors under

this section and the procedure for summoning qualified prospective jurors whose names are drawn from the qualified jury wheel.

(c) Upon receipt of an order for a grand jury, the jury commissioner shall publicly, and in accordance with section 20 [IC 33-4-11-20] of this chapter, draw at random from the qualified jury wheel twelve (12) qualified jurors and direct them to appear before the supervising judge. The supervising judge shall randomly select six (6) jurors after:

(1) explaining to the twelve (12) prospective jurors the duties and responsibilities of a grand jury; and

(2) excusing jurors under section 18 [IC 33-4-11-18] of this chapter.

(d) Whenever there is an unanticipated shortage of available petit jurors drawn from a qualified jury wheel, the supervising judge may require the jury commissioner to draw additional jurors at random from the qualified jury wheel. Talesmen may not be solicited from among bystanders or from any source except from among names drawn from the qualified jury wheel.

(e) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors may not be made available to the public until the period of service of those jurors has expired. However, attorneys in any cases in which these jurors may serve may have access to the information. [P.L.4-1998, § 11.]

33-4-11-20. Drawing names from qualified jury wheel. — The same method described in section 15 [IC 33-4-11-15] of this chapter for drawing names from the master list must be followed for drawing names from the qualified jury wheel unless the names in the qualified jury wheel are not in some sequential order as described in section 15 of this chapter. If the names are in the form of ballots or in some other form requiring them to be blindly drawn from a container by hand, the key number system is not necessary. [P.L.4-1998, § 11.]

33-4-11-21. Proceedings relating to substantial failure to comply with chapter. — (a) Not later than seven (7) days after a moving party discovers or by the exercise of diligence could have discovered grounds, but before a petit jury is sworn to try a case, a party may:

(1) in a civil case move to stay the proceedings; and

(2) in a criminal case move:

(A) to dismiss the indictment (if the case has been brought by indictment);

(B) to stay the proceedings; or

(C) for other appropriate relief;

on the ground of substantial failure to comply with this chapter in selecting the prospective grand or petit jurors.

(b) Upon a motion filed under subsection (a) containing a sworn statement of facts that, if true, would constitute a substantial failure to comply with this chapter, the moving party may present in support of the motion the testimony of the jury commissioner, relevant records and papers not public or otherwise available used by the jury commissioner, and other relevant evidence. If the court determines that in selecting either a grand

jury or a petit jury there has been a substantial failure to comply with this chapter, the court:

(1) shall stay the proceedings pending the selection of the jury in conformity with this chapter; and

(2) may dismiss an indictment (if the case was brought by indictment) or grant other appropriate relief.

(c) The procedures required by this section are the exclusive means by which the state, a person accused of an offense, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.

(d) The parties to the case may inspect, reproduce, and copy the records or papers of the jury commissioner at all reasonable times during the preparation and pendency of a motion under subsection (a). [P.L.4-1998, § 11.]

33-4-11-22. Preservation of records and papers. — After the period of service for which names were drawn from the master jury list has expired, and all persons elected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury commissioner or the clerk must be preserved by the clerk of the courts for the period prescribed by rule of the Indiana supreme court. The records and papers must be available for public inspection at all reasonable times. [P.L.4-1998, § 11.]

33-4-11-23. Length of jury service — Selection for subsequent jury panel. — (a) A person who appears for service as a petit or grand juror serves until the conclusion of the first trial in which the juror is sworn, regardless of the length of the trial or the manner in which the trial is disposed. A person who appears for service but is not selected and sworn as a juror completes the person's service at the end of one (1) day.

(b) A person who:

(1) serves as a juror under this chapter; or

(2) completes one (1) day of jury selection but is not chosen to serve as a juror;

may not be selected for another jury panel until all nonexempt persons on the master list have been called for jury duty. [P.L.4-1998, § 11.]

33-4-11-24. Failure to appear or complete jury service. — A person summoned for jury service who fails to appear or complete jury service as directed must be ordered by the court to immediately appear and show cause for the person's failure to comply with the summons. If the person fails to show good cause for noncompliance with the summons, the person is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars (\$100) or imprisoned in the county jail for not more than three (3) days, or both. [P.L.4-1998, § 11.]

33-4-11-25. Adoption of rules. — The Indiana supreme court may adopt rules, not inconsistent with this chapter, regulating the selection and service of jurors. [P.L.4-1998, § 11.]

ARTICLE 5

SUPERIOR COURTS

CHAPTER.

1. [REPEALED.]
2. STANDARD SMALL CLAIMS AND MISDEMEANOR DIVISION OF SUPERIOR COURTS, 33-5-2-1 — 33-5-2-10.
- 2.5. SMALL CLAIMS REFEREES, 33-5-2.5-1 — 33-5-2.5-6.
3. DIVISION OF ROOMS IN SUPERIOR COURTS, 33-5-3-1.
- 3.5. TERMS AND POWERS OF SUPERIOR COURTS, 33-5-3.5-1 — 33-5-3.5-6.
4. TRANSFER OF ACTION TO CIRCUIT COURT, 33-5-4-1 — 33-5-4-4.
- 4.5. ADAMS SUPERIOR COURT, 33-5-4.5-1 — 33-5-4.5-71.
5. [REPEALED.]
- 5.1. ALLEN SUPERIOR COURT, 33-5-5.1-1 — 33-5-5.1-71.
- 6, 7. [REPEALED.]
8. BARTHOLOMEW SUPERIOR COURT, 33-5-8-1 — 33-5-8-10.
9. BOONE SUPERIOR COURT, 33-5-9-1 — 33-5-9-19.
- 9.5. CARROLL SUPERIOR COURT, 33-5-9.5-1 — 33-5-9.5-11.
- 9.7. CASS SUPERIOR COURT, 33-5-9.7-1 — 33-5-9.7-16.
10. CLARK SUPERIOR COURTS, 33-5-10-1 — 33-5-10-24.
- 10.3. CLINTON SUPERIOR COURT, 33-5-10.3-1 — 33-5-10.3-11.
- 10.5. CLAY SUPERIOR COURT, 33-5-10.5-1 — 33-5-10.5-17.
- 10.6. DAVIESS SUPERIOR COURT, 33-5-10.6-1 — 33-5-10.6-11.
- 10.7. DECATUR SUPERIOR COURT, 33-5-10.7-1 — 33-5-10.7-11.
- 10.8. DEKALB SUPERIOR COURT, 33-5-10.8-1 — 33-5-10.8-19.
- 10.9. FULTON SUPERIOR COURT, 33-5-10.9-1 — 33-5-10.9-11.
11. GRANT SUPERIOR COURT, 33-5-11-1 — 33-5-11-16.
12. [REPEALED.]
- 12.1. DELAWARE SUPERIOR COURTS No. 1, No. 2, No. 3, AND No. 4, 33-5-12.1-1 — 33-5-12.1-16.
- 12.5. DUBOIS SUPERIOR COURT, 33-5-12.5-1 — 33-5-12.5-16.
13. [REPEALED.]
- 13.1. ELKHART SUPERIOR COURT, 33-5-13.1-1 — 33-5-13.1-16.
- 14-17. [REPEALED.]
- 17.1. FAYETTE SUPERIOR COURT, 33-5-17.1-1 — 33-5-17.1-11.
18. [REPEALED.]
- 18.1. FLOYD SUPERIOR COURT, 33-5-18.1-1 — 33-5-18.1-14.

CHAPTER.

- 18.3. GIBSON SUPERIOR COURT, 33-5-18.3-1 — 33-5-18.3-11.
19. GRANT SUPERIOR COURT No. 2, 33-5-19-1 — 33-5-19-9.
- 19.3. GRANT SUPERIOR COURT No. 3, 33-5-19.3-1 — 33-5-19.3-11.
- 19.5. GREENE SUPERIOR COURT, 33-5-19.5-1 — 33-5-19.5-11.
- 19.8. HARRISON SUPERIOR COURT, 33-5-19.8-1 — 33-5-19.8-11.
20. [REPEALED.]
- 20.1. HOWARD SUPERIOR COURT, 33-5-20.1-1 — 33-5-20.1-26.
- 20.2. HOWARD SUPERIOR COURT No. 3, 33-5-20.2-1 — 33-5-20.2-11.
21. HENRY SUPERIOR COURT, 33-5-21-1 — 33-5-21-14.
22. HAMILTON SUPERIOR COURTS, 33-5-22-1 — 33-5-22-12.
23. HANCOCK SUPERIOR COURT, 33-5-23-1 — 33-5-23-13.
24. JOHNSON SUPERIOR COURTS, 33-5-24-1 — 33-5-24-14.
25. HENDRICKS SUPERIOR COURTS, 33-5-25-1 — 33-5-25-18.
- 25.3. HUNTINGTON SUPERIOR COURT, 33-5-25.3-1 — 33-5-25.3-11.
- 25.4. JACKSON SUPERIOR COURT, 33-5-25.4-1 — 33-5-25.4-11.
- 25.5. JASPER SUPERIOR COURT, 33-5-25.5-1 — 33-5-25.5-18.
- 25.7. JAY SUPERIOR COURT, 33-5-25.7-1 — 33-5-25.7-11.
- 25.8. JEFFERSON SUPERIOR COURT, 33-5-25.8-1 — 33-5-25.8-11.
- 25.9. JENNINGS SUPERIOR COURT, 33-5-25.9-1 — 33-5-25.9-11.
26. KNOX SUPERIOR COURT, 33-5-26-1 — 33-5-26-22.
27. KOSCIUSKO SUPERIOR COURT, 33-5-27-1 — 33-5-27-17.
- 27.5. LaGRANGE SUPERIOR COURT, 33-5-27.5-1 — 33-5-27.5-11.
- 28, 29. [REPEALED.]
- 29.5. SUPERIOR COURT OF LAKE COUNTY, 33-5-29.5-1 — 33-5-29.5-71.
- 30, 31. [REPEALED.]
- 31.1. LaPORTE SUPERIOR COURTS, 33-5-31.1-1 — 33-5-31.1-12.
32. [REPEALED.]
- 32.5. LAWRENCE SUPERIOR COURT, 33-5-32.5-1 — 33-5-32.5-25.
33. [REPEALED.]
- 33.1. MADISON SUPERIOR COURT, 33-5-33.1-1 — 33-5-33.1-24.
- 34, 35. [REPEALED.]
- 35.1. [REPEALED.]

CHAPTER.

- 35.5. MARSHALL SUPERIOR COURT, 33-5-35.5-1 — 33-5-35.5-18.
- 35.8. MIAMI SUPERIOR COURT, 33-5-35.8-1 — 33-5-35.8-16.
- 36, 36.1. [REPEALED.]
- 36.6. MONTGOMERY SUPERIOR COURT, 33-5-36.6-1 — 33-5-36.6-10.
- 37. MORGAN SUPERIOR COURT, 33-5-37-1 — 33-5-37-7.
- 37.1. [REPEALED.]
- 37.2. NEWTON SUPERIOR COURT, 33-5-37.2-1 — 33-5-37.2-16.
- 37.5. NOBLE SUPERIOR COURT, 33-5-37.5-1 — 33-5-37.5-14.
- 37.7. OHIO AND SWITZERLAND SUPERIOR COURT, 33-5-37.7-1 — 33-5-37.7-16.
- 38. PORTER SUPERIOR COURT, 33-5-38-1 — 33-5-38-33.
- 38.1. POSEY SUPERIOR COURT, 33-5-38.1-1 — 33-5-38.1-11.
- 38.2. PULASKI SUPERIOR COURT, 33-5-38.2-1 — 33-5-38.2-11.
- 38.3. PUTNAM SUPERIOR COURT, 33-5-38.3-1 — 33-5-38.3-11.
- 38.5. RANDOLPH SUPERIOR COURT, 33-5-38.5-1 — 33-5-38.5-11.
- 38.7. RIPLEY SUPERIOR COURT, 33-5-38.7-1 — 33-5-38.7-11.
- 38.9. SCOTT SUPERIOR COURT, 33-5-38.9-1 — 33-5-38.9-11.
- 39. SHELBY SUPERIOR COURT, 33-5-39-1 — 33-5-39-14.
- 40. ST. JOSEPH SUPERIOR COURT, 33-5-40-1 — 33-5-40-72.
- 40.1. STEUBEN SUPERIOR COURT, 33-5-40.1-1 — 33-5-40.1-12.

CHAPTER.

- 40.5. SULLIVAN SUPERIOR COURT, 33-5-40.5-1 — 33-5-40.5-11.
- 41. TIPPECANOE SUPERIOR COURT, 33-5-41-1 — 33-5-41-18.
- 42. TIPPECANOE SUPERIOR COURT No. 2, 33-5-42-1 — 33-5-42-11.
- 42.1. TIPPECANOE SUPERIOR COURT No. 3, 33-5-42.1-1 — 33-5-42.1-11.
- 43. VANDERBURGH SUPERIOR COURT, 33-5-43-1 — 33-5-43-35.
- 43.1. [REPEALED.]
- 43.2. VANDERBURGH CIRCUIT AND SUPERIOR COURTS — ELECTION OF JUDGES, 33-5-43.2-1, 33-5-43.2-2.
- 43.5, 44. [REPEALED.]
- 44.1. VIGO SUPERIOR COURT, 33-5-44.1-1 — 33-5-44.1-27.
- 45. [REPEALED.]
- 45.1. WABASH SUPERIOR COURT, 33-5-45.1-1 — 33-5-45.1-11.
- 45.5. WARRICK SUPERIOR COURT, 33-5-45.5-1 — 33-5-45.5-25.
- 45.8. WASHINGTON SUPERIOR COURT, 33-5-45.8-1 — 33-5-45.8-11.
- 46. WAYNE SUPERIOR COURT, 33-5-46-1 — 33-5-46-6.
- 47. WAYNE SUPERIOR COURT No. 2, 33-5-47-1 — 33-5-47-10.
- 48. WAYNE SUPERIOR COURT No. 3, 33-5-48-1 — 33-5-48-15.
- 48.5. WELLS SUPERIOR COURT, 33-5-48.5-1 — 33-5-48.5-11.
- 49. WHITE SUPERIOR COURT, 33-5-49-1 — 33-5-49-11.
- 50. WHITLEY SUPERIOR COURT, 33-5-50-1 — 33-5-50-11.

CHAPTER 1

COSTS ADJUDGED BY THE COURT

33-5-1-1. [Repealed.]

Compiler's Notes. This chapter, concerning superior court costs, was repealed by

P.L.171-1984, § 80 and, effective February 21, 1992, by P.L.1-1992, § 169.

CHAPTER 2

STANDARD SMALL CLAIMS AND MISDEMEANOR DIVISION OF SUPERIOR COURTS

SECTION.

- 33-5-2-1. [Repealed.]
- 33-5-2-2. Applicability of chapter.
- 33-5-2-3. Dockets.
- 33-5-2-4. Small claims docket — Jurisdiction.
- 33-5-2-5. Small claims docket — Practice and procedure — Exceptions.
- 33-5-2-6. Change of venue from county — Change of venue from judges.
- 33-5-2-7. Trial by jury.

SECTION.

- 33-5-2-8. Minor offenses and violation docket — Jurisdiction — Traffic violations bureau.
- 33-5-2-9. Evening sessions — Additional sessions.
- 33-5-2-10. Compliance with requests of executive director of state court administration.

33-5-2-1. [Repealed.]

Compiler's Notes. This section, concerning distribution of Supreme Court decisions, was repealed by P.L.167-1984, § 92.

33-5-2-2. Applicability of chapter. — This chapter applies to each superior court for which this article provides a standard small claims and misdemeanor division. [P.L.167-1984, § 34.]

33-5-2-3. Dockets. — The small claims and misdemeanor division of the court has the following dockets:

- (1) A small claims docket.
- (2) A minor offenses and violations docket.

[P.L.167-1984, § 35.]

33-5-2-4. Small claims docket — Jurisdiction. — The small claims docket has jurisdiction over the following:

- (1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.
- (2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000). [P.L.167-1984, § 36; P.L.19-1986, § 51; P.L.301-1987, § 2.]

Indiana Law Review. 1994 Developments in Property Law, 28 Ind. L. Rev. 1041 (1995).

NOTES TO DECISIONS**ANALYSIS**

In general.
Amount of claim.
Amount of damages.
Injunctive relief.
Possessory actions.

In General.

The jurisdiction of an inferior court, such as the small claims division of a superior court, is limited to that which is granted by the constitution or statute. *Buckmaster v. Platter*, 426 N.E.2d 148 (Ind. App. 1981).

Amount of Claim.

The small claims division has jurisdiction to hear claims "involving" more than \$3,000 in damages so long as the party waives any excess over the statutory amount. *Meyers v. Langley*, 638 N.E.2d 875 (Ind. App. 1994).

Amount of Damages.

Nothing in this statute prevents the small

claims court from recognizing that the plaintiff's damages exceed the statutory amount; so long as the judge's award is within jurisdiction bounds, the award is sound. *Meyers v. Langley*, 638 N.E.2d 875 (Ind. App. 1994).

Injunctive Relief.

Although a claim seeking injunctive relief cannot be heard on the small claims docket of the small claims and misdemeanor division of the superior court, there is no similar jurisdictional obstruction preventing injunctive relief cases from being heard on the minor offenses and violations docket of the small claims and misdemeanor division. *Sanders v. Area Plan Comm'n*, 581 N.E.2d 983 (Ind. App. 1991).

Possessory Actions.

Superior courts exercising small claims jurisdiction have jurisdiction over claims that are less than \$3,000 or a possessory action between landlord and tenant, regardless of

Possessory Actions. (Cont'd)
the value of the property involved. In re Pub.

Law No. 305 & Pub. Law No. 309, 263 Ind.
506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

Collateral References. Small claims: jurisdictional limits as binding on appellate court. 67 A.L.R.4th 1117.

33-5-2-5. Small claims docket — Practice and procedure — Exceptions. — (a) The exceptions provided in this section to formal practice and procedure apply to all cases on the small claims docket.

(b) A defendant is deemed to have complied with the statute and rule requiring the filing of an answer upon entering an appearance personally or by attorney. The appearance constitutes a general denial and preserves all defenses and compulsory counterclaims, which may then be presented at the trial of the cause.

(c) If, at the trial of the cause, the court determines:

(1) That the complaint is so vague or ambiguous that the defendant was unable to determine the nature of plaintiffs' claim; or

(2) That the plaintiff is surprised by a defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated;

the court shall grant a continuance.

(d) The trial shall be conducted informally, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. The trial is not bound by the statutes or rules governing practice, procedure, pleadings, or evidence except for provisions relating to privileged communications and offers of compromise. [P.L.167-1984, § 37.]

NOTES TO DECISIONS

Representation by Counsel.

While one of the premises of the small claims docket is the nonnecessity of being represented by counsel, if one elects to be represented by counsel he is entitled to the

benefit of his attorney's expertise. *Bedree v. Larson*, 181 Ind. App. 270, 391 N.E.2d 670, 70 Ind. Dec. 370 (1979) (decided under former IC 33-10-5-3-3).

33-5-2-6. Change of venue from county — Change of venue from judges. — There is no change of venue from the county as of right in cases on the small claims docket. However, a change of venue from the judge shall be granted as provided by statute and by rules of the Supreme Court of Indiana. [P.L.167-1984, § 38.]

33-5-2-7. Trial by jury. — (a) The filing of a claim on the small claims docket is deemed a waiver of trial by jury.

(b) The defendant may, not later than ten (10) days following service of the complaint in a small claims case, demand a trial by jury by filing an affidavit that:

(1) states that there are questions of fact requiring a trial by jury;

(2) specifies those questions of fact; and

- (3) states that the demand is in good faith.
- (c) Notice of the defendant's right to a jury trial, and the ten (10) day period in which to file for a jury trial, shall be clearly stated on the notice of claim or on an additional sheet to be served with the notice of claim on the defendant.
- (d) Upon the deposit of seventy dollars (\$70) in the small claims docket by the defendant, the court shall transfer the claim to the plenary docket. Upon transfer, the claim then loses its status as a small claim. [P.L.167-1984, § 39; P.L.209-1996, § 4; P.L.213-1996, § 2.]

NOTES TO DECISIONS

Deposit Required for Transfer. Defendant could not complain that the trial court did not transfer case to the plenary docket for a trial by jury, where she did not establish her indigency or request leave to proceed without payment of the deposit required for transfer. *Stout v. Kokomo Manor Apts.*, 677 N.E.2d 1060 (Ind. App. 1997).

Collateral References. Small claims; jury trial rights in, and on appeal from, small claims court proceeding. 70 A.L.R.4th 1119.

33-5-2-8. Minor offenses and violation docket — Jurisdiction — Traffic violations bureau. — (a) The minor offenses and violations docket has jurisdiction over the following:

- (1) All Class D felony cases.
- (2) All misdemeanor cases.
- (3) All infraction cases.
- (4) All ordinance violation cases.

(b) The court shall establish a traffic violations bureau in the manner prescribed by IC 34-28-5-7 through IC 34-28-5-13. [P.L.167-1984, § 40; P.L.1-1998, § 175.]

Cross References. Penalties for felonies, IC 35-50-1, IC 35-50-2, IC 35-50-5-2.

NOTES TO DECISIONS

<p>ANALYSIS</p> <p>Concurrent jurisdiction. —Circuit court. Injunctive relief.</p> <p>Concurrent Jurisdiction.</p> <p>—Circuit Court.</p> <p>The Hendricks Circuit Court and Hendricks Superior Courts one and two all have concurrent jurisdiction over Class D felonies and misdemeanors. <i>State ex rel.</i></p>	<p><i>Adams v. Hendricks Circuit Court</i>, 497 N.E.2d 546 (Ind. 1986).</p> <p>Injunctive Relief.</p> <p>Although a claim seeking injunctive relief cannot be heard on the small claims docket of the small claims and misdemeanor division of the superior court, there is no similar jurisdictional obstruction preventing injunctive relief cases from being heard on the minor offenses and violations docket of the small claims and misdemeanor division. <i>Sanders v. Area Plan Comm'n</i>, 581 N.E.2d 983 (Ind. App. 1991).</p>
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33-5-2-9. Evening sessions — Additional sessions. — (a) The court shall provide by rule for an evening session to be held once each week.

(b) The court shall hold additional sessions in the evening and on holidays as necessary to insure the just, speedy, and inexpensive determination of every action. [P.L.167-1984, § 41.]

33-5-2-10. Compliance with requests of executive director of state court administration. — The court shall comply with all requests made under IC 33-2.1-7-3 by the executive director of state court administration concerning the small claims and misdemeanor division. [P.L.167-1984, § 42.]

CHAPTER 2.5

SMALL CLAIMS REFEREES

SECTION.

33-5-2.5-1. Applicability of chapter.

33-5-2.5-2. Qualifications.

33-5-2.5-3. Appointment.

SECTION.

33-5-2.5-4. Powers.

33-5-2.5-5. Duties.

33-5-2.5-6. Supervision by judge.

33-5-2.5-1. Applicability of chapter. — This chapter applies to each superior court having a standard small claims and misdemeanor division for which a judge of the superior court is authorized under this article to appoint a small claims referee. [P.L.392-1987(ss), § 2.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-2.5-2. Qualifications. — A small claims referee shall serve at such times as the court requires. A small claims referee:

- (1) Must be admitted to the practice of law in Indiana;
- (2) Need not be a resident of the county; and
- (3) Continues in office until removed by the judge of the court.

[P.L.392-1987(ss), § 2.]

33-5-2.5-3. Appointment. — The appointment of the small claims referee:

- (1) Must be in writing; and
- (2) Does not prohibit the private practice of law by the appointee.

[P.L.392-1987(ss), § 2.]

33-5-2.5-4. Powers. — A small claims referee may:

- (1) Administer all oaths and affirmations;
- (2) Take and certify affidavits and depositions;
- (3) Issue subpoenas for witnesses;
- (4) Compel the attendance of witnesses; and
- (5) Punish contempts;

for matters within the small claims jurisdiction of the court. [P.L.392-1987(ss), § 2.]

33-5-2.5-5. Duties. — The small claims referee shall:

- (1) Conduct trials of small claims cases;
- (2) For cases disposed of by trial, submit written findings of fact, conclusions of law, and recommendations for final judgments to the judge of the court; and
- (3) For cases disposed of without trial, submit a written disposition report to the judge of the court. [P.L.392-1987(ss), § 2.]

33-5-2.5-6. Supervision by judge. — The judge of the court may limit any of the rights or powers of the small claims referee, and the judge may specifically determine the duties of the small claims referee within the limits established in this chapter. [P.L.392-1987(ss), § 2.]

CHAPTER 3
DIVISION OF ROOMS IN SUPERIOR COURTS

SECTION.
33-5-3-1. Election of judges.

33-5-3-1. Election of judges. — In all counties of this state having a superior court consisting of two (2) or more judges, such court shall be divided into rooms and such rooms numbered consecutively, beginning with No. 1, and the judges of said courts shall be nominated and elected by rooms: Provided, That any one (1) of said judges shall have full power and authority to sit as judge in the other rooms of said court. [Acts 1907, ch. 22, § 1, p. 42.]

Compiler's Notes. This section, so far as it is inconsistent with Acts 1971, P.L. 429 (IC 33-5-5.1-1 — IC 33-5-5.1-71) or with the Allen Superior Court and its jurisdiction, is specifically repealed by Acts 1971, P.L. 429, § 8, effective December 1, 1971.	This section, so far as it is inconsistent with Acts 1973, P.L. 308 (IC 33-5-29.5-1 et seq.) or with the superior court of Lake County and its jurisdiction, is specifically repealed by Acts 1973, P.L. 308, § 2.
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NOTES TO DECISIONS

Election of Judges Judicially Known. The Supreme Court knows, as a matter of law, that at the general election in November, 1930, a judge of Superior Court, Room 2, of	Marion County, was elected, and that the judge elected took office January 1, 1931. State ex rel. Neal v. Superior Court, 202 Ind. 456, 174 N.E. 732 (1931).
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CHAPTER 3.5
TERMS AND POWERS OF SUPERIOR COURTS

SECTION.
33-5-3.5-1. Applicability to superior courts — Exceptions.
33-5-3.5-2. General terms — Special terms.
33-5-3.5-3. Powers of court.

SECTION.
33-5-3.5-4. Powers of judges.
33-5-3.5-5. Change of venue from judge — Transfer to circuit court.
33-5-3.5-6. Appeals.

33-5-3.5-1. Applicability to superior courts — Exceptions. — Terms and powers described in this chapter apply to superior courts except as otherwise provided in the particular statute creating the superior court for a particular county. [P.L.1-1998, § 55.]

33-5-3.5-2. General terms — Special terms. — When any superior court consists of more than one judge, there shall be held general and special terms thereof. A general term of such court may be held by a majority of the judges, and a special term by any one or more of them; and general and special terms, or one or more of them, may be held at the same time, as the judges of the court may direct; and whenever such term or terms are held, they shall be taken and deemed to have been held by the authority and direction of the judges. [P.L.1-1998, § 55.]

NOTES TO DECISIONS

One Superior Court.

There was but one superior court of Marion County, and the courts held by the several

judges were not independent courts. *Richcreek v. Russell*, 34 Ind. App. 217, 72 N.E. 617 (1904).

33-5-3.5-3. Powers of court. — (a) The said court, at general or special term, shall have the following powers:

- (1) To issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals, which shall be necessary in exercising its jurisdiction, and for the regular execution of the law.
- (2) To make all proper judgments, sentences, decrees, orders and injunctions.
- (3) To issue all process and executions.
- (4) To do such other acts as may be necessary to carry into effect the same, in conformity with the Constitution and laws of the state.

(b) The court shall, at such times as the business of the court may require it, meet in general term, and may, at any time, make such distribution and redistribution of the business of the court to special term, as it may deem proper.

(c) Each judge holding court at special term shall transact the business assigned him; but he may, in his discretion, call one or more of the judges of said court to sit with him in such special term, for the consideration of any matter pending before him.

(d) The court, at special term, shall have full power to hear and dispose of business distributed to it by the general term; and it shall, at either special or general term, have the same power, to vacate or modify its own judgments or orders, rendered at either special or general term, and to enter judgments by confession, as is, or may be, vested by law in circuit courts. [P.L.1-1998, § 55.]

33-5-3.5-4. Powers of judges. — The judges of said court, or either of them, shall have the same power to do the following:

- (1) Grant restraining orders, injunctions and writs of ne exeat.
- (2) Issue writs of habeas corpus, and of mandate and prohibition.
- (3) Appoint receivers, master commissioners and commissioners to convey real property.
- (4) Grant commissions for the examination of witnesses.
- (5) Appoint other officers necessary to facilitate and transact the business of said court, as is now, or may hereafter be, conferred on judges of circuit courts. [P.L.1-1998, § 55.]

NOTES TO DECISIONS

Injunction.

The Constitution of Indiana gives circuit and superior courts only such jurisdiction in the matter of granting injunctions and restraining orders as may be prescribed by law and the statutes give them only such jurisdiction in those matters as courts of chancery had at common law except in actions for

divorce and, perhaps, in some other matters. *State ex rel. Coffin v. Superior Court*, 196 Ind. 614, 149 N.E. 174 (1925).

The Marion superior court had jurisdiction of a suit to enjoin the maintenance of a liquor nuisance as defined in the Prohibition Law. *Levy v. State ex rel. Remy*, 86 Ind. App. 666, 152 N.E. 873 (1926).

33-5-3.5-5. Change of venue from judge — Transfer to circuit court. — When any reason for a change of venue is shown to exist from any of the judges, as in other cases, the remaining judge or judges alone shall act but when all are incompetent to act, the case shall be transferred to the circuit court of the county. [P.L.1-1998, § 55.]

33-5-3.5-6. Appeals. — (a) In all cases where a person has the right of appeal from the circuit to the supreme court or court of appeals, an appeal may be taken direct to the supreme court or court of appeals from any order or judgment of the superior court.

(b) Appeals described in subsection (a) are governed by the law regulating appeals from the circuit court to the supreme court or court of appeals.

(c) Appeals from the special to the general term are abolished. [P.L.1-1998, § 55.]

Cross References. For consideration of appeals, see Rule AP. 4.

NOTES TO DECISIONS

ANALYSIS

In general.

Constitutionality.

Appeals.

—Vacation and term time.

Bond of clerk.

Change of venue.

General and special terms.

Jurisdiction.

Terms of court.

In General.

The legislature could establish superior courts and confer on such courts the same jurisdiction as was conferred on circuit courts. *Woods v. McCay*, 141 Ind. 316, 43 N.E. 269, 33 L.R.A. 97 (1895); *Swartz v. Board of County Comm'rs*, 158 Ind. 141, 63 N.E. 31 (1902); *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

Superior courts could not appoint counsel at the expense of the county to uphold the law establishing such courts when the validity thereof was attacked. *Barr v. State ex rel. Reading*, 148 Ind. 424, 47 N.E. 829 (1897).

Boards of county commissioners were authorized to erect buildings in which to hold

superior courts and to provide offices for the officers thereof. *Swartz v. Board of County Comm'rs*, 158 Ind. 141, 63 N.E. 31 (1902).

When a court was created by a special act, the same act could provide how places for holding court should have been procured. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

The law could provide that superior court judges should receive the same salaries as were paid to circuit court judges. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

The act establishing superior courts in Elkhart and St. Joseph Counties was constitutional. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907); *Harlin v. Schafer*, 169 Ind. 1, 81 N.E. 721 (1907).

The legislature could establish superior courts and confer the same jurisdiction on such courts as was conferred on circuit courts. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907); *Curless v. Watson*, 180 Ind. 86, 102 N.E. 497 (1913).

The Marion superior court was a court of general jurisdiction and all presumptions were in favor of its judgments. *Clark v. Clark*, 202 Ind. 104, 172 N.E. 124 (1930).

In General. (Cont'd)

The Supreme Court had the power and authority, ultimately and conclusively, to determine the jurisdiction of all other judicial tribunals in the state. *State ex rel. Meyer-Kiser Bank v. Superior Court*, 202 Ind. 589, 177 N.E. 322 (1931).

Jurisdiction of the Marion superior court was invoked by the filing of an action and the issuing of summons, and its jurisdiction could not be ousted by the action of the Putnam circuit court. *Givan v. Marion Superior Court*, 207 Ind. 74, 191 N.E. 144 (1934).

The superior court of Marion County was a statutory or legislative court as distinguished from a constitutional court, and its powers were derived from the statute creating it. *Fenstermacher v. Indianapolis Times Publishing Co.*, 102 Ind. App. 189, 1 N.E.2d 655 (1936).

Constitutionality.

This amended section is constitutional. *Citizens St. R.R. v. Haugh*, 142 Ind. 254, 41 N.E. 533 (1895).

Appeals.

In appeal it is the duty of the clerk of the court to include in the transcript all copies pertaining to the transfer of the case from other courts to the court in which the action was tried and from which the appeal is taken. *Durbin v. Northwestern Scraper Co.*, 36 Ind. App. 123, 73 N.E. 297, appeal dismissed, 165 Ind. 237, 75 N.E. 1 (1905).

Where a case was transferred from the circuit court to the superior court of the county, without a transcript, and the case was then venued to the circuit court of another county, the superior court clerk could not certify to the proceedings had in the circuit court of the first county, for the purpose of an appeal to the Appellate Court. *Metropolitan Life Ins. Co. v. George*, 105 Ind. App. 364, 11 N.E.2d 1006 (1938).

—Vacation and Term Time.

An appeal could not be considered perfected as a term-time appeal on the ground that while the court was recessed the judge, with the consent and acquiescence of all the parties, approved the appeal bond, where the record showed that the court was in vacation, rather than recessed, and did not show that either the appellee or appellant or their attorneys were present at, or knew of, the approval of the bond by the judge, and an approval by the defendants' attorney of the surety on the bond, dated before the date of the court's approval, could at most have been considered as approval only of the surety and not of the subsequent action of the court in approving the bond in vacation. *Lock Joint Tube Co. v.*

Citizens Trust & Sav. Bank, 218 Ind. 162, 31 N.E.2d 989 (1941).

Where the record of the clerk of the superior court of Elkhart county showed that the court was in vacation when an appeal bond was approved, the Supreme Court assumed that the term had been adjourned pursuant to the statute creating the court. *Lock Joint Tube Co. v. Citizens Trust & Sav. Bank*, 218 Ind. 162, 31 N.E.2d 989 (1941).

An appeal, where appellant's bond was filed and approved by the superior court after term time, was a vacation appeal requiring notice to the appellee. *Commonwealth Casualty Co. v. Cinder Block & Material Co.*, 97 Ind. App. 573, 187 N.E. 410 (1933).

Where a judgment was rendered at April term of the Marion superior court and no appeal was prayed for or granted, no appeal bond fixed, and no time fixed within which to file appeal bond, an appeal granted on the following May 10 was a vacation appeal, requiring notice thereof to the adverse party. *American Aggregates Corp. v. Wentz*, 97 Ind. App. 596, 187 N.E. 677 (1933).

Bond of Clerk.

Bond of clerk of circuit court of a county in Indiana, who was also ex officio clerk of the superior court of that county, covered fees collected in the superior court to the same extent as those collected in the circuit court. *Indiana ex rel. United States v. Killigrew*, 117 F.2d 863 (7th Cir. 1941).

Change of Venue.

A change of venue could be obtained only in the manner provided by statute and in accordance with the provisions thereof. *State ex rel. Neal v. Superior Court*, 202 Ind. 456, 174 N.E. 732 (1931).

Where suit to contest will was filed in the superior court of Madison County, in which court the will had previously been admitted to probate, and the action to contest the will was given a civil cause number, but thereafter the court on its own motion transferred the action to contest to the estate number under which the will was probated, and the contest action was then venued to another county, prohibition would not lie to prevent such court from taking jurisdiction on the ground that the complaint to contest the will must have been filed in the estate proceedings and not as a separate civil action. *State ex rel. Townsend v. Tipton Circuit Court*, 242 Ind. 226, 177 N.E.2d 590 (1961).

Where a cause brought in the circuit court was without objections transferred to the superior court, which had general jurisdiction of the subject-matter, under this section, and the issues were made up and the case tried, the defendants thereby waived their right to

Change of Venue. (Cont'd)

object to the jurisdiction of the court. *Stoll v. Rich*, 88 Ind. App. 639, 165 N.E. 67 (1929).

Where a case in superior court, in which a motion for judgment *nunc pro tunc* was pending, was transferred by consent to the circuit court, the moving parties were thereafter estopped to question the circuit court's jurisdiction, and could not have the case transferred. *Willard v. Loucks*, 97 Ind. App. 131, 175 N.E. 256 (1931).

General and Special Terms.

A "general term" is one presided over by a majority of all the judges where each judge had power and authority equal to that of each other judge and a "special term" is one which is a regular term of each subdivision presided over by the judge of that subdivision in whose name alone the record is made although other judges may sit in an advisory capacity. *State ex rel. Dearbeyne v. Greenwald*, 186 Ind. 321, 116 N.E. 296 (1917).

Jurisdiction.

Superior courts had jurisdiction over actions to quiet title to land. *Browning v. Smith*, 139 Ind. 280, 37 N.E. 540 (1894); *Hancock v. Maynard*, 72 Ind. App. 661, 126 N.E. 451 (1920).

The drainage statute in force at the time this case was decided expressly provided that superior courts should have jurisdiction of drainage proceedings; and prior to its enactment, the Supreme Court held that they had jurisdiction of appeals from drainage proceedings commenced before the board of county commissioners. *Hockemeyer v. Thompson*, 150 Ind. 176, 48 N.E. 1029, 49 N.E. 1059 (1898).

It was the duty of a court to give full faith and credit to a judgment, fair on its face, rendered by a domestic court of coordinate jurisdiction. *Bruce v. Osgood*, 154 Ind. 375, 56 N.E. 25 (1900).

Jurisdiction of superior courts to issue writs of mandate and prohibition was upheld. *Martin v. Marks*, 154 Ind. 549, 57 N.E. 249 (1900).

The superior court of any county had no jurisdiction of a suit to contest a will that was admitted to probate by the circuit court of such county. *Marchant v. Olson*, 184 Ind. 17, 110 N.E. 200 (1915).

The orders and decrees of one court were not subject to change or modification by any other tribunal of equal or concurrent jurisdiction.

Board of Comm'rs v. Summy, 193 Ind. 456, 140 N.E. 913 (1923).

A superior court had no jurisdiction to modify the orders of the circuit court establishing a drain according to certain plans and specifications, or to enjoin the execution of its orders establishing the drain, and thus prevent the destruction of certain highway bridges along the line of the drain, when the construction thereof according to such plans would have required their removal. *Board of Comm'rs v. Summy*, 193 Ind. 456, 140 N.E. 913 (1923).

A superior court was without jurisdiction to grant an injunction regulating and controlling the acts which should or should not be done by the presiding officer and members of a convention of the representatives of a political party met for a distinctively political purpose. *State ex rel. Coffin v. Superior Court*, 196 Ind. 614, 149 N.E. 174 (1925).

A superior court did not acquire jurisdiction to appoint a receiver for a bank when the application for the appointment was made by any one other than the bank commissioner. *State ex rel. Meyer-Kiser Bank v. Superior Court*, 202 Ind. 589, 177 N.E. 322 (1931). (This case was decided under the former banking law.)

As between the Marion superior and the Putnam circuit courts, in an action for appointment of a receiver, that court first acquiring jurisdiction had dominion over the subject-matter. *Givan v. Marion Superior Court*, 207 Ind. 74, 191 N.E. 144 (1934).

Superior courts did not have jurisdiction in actions for recovery of illegal fees collected. *State ex rel. McKinney v. Souder*, 14 Ind. App. 472, 41 N.E. 468 (1895).

The superior courts had jurisdiction of actions to partition lands. *Romy v. State ex rel. Brannan*, 32 Ind. App. 146, 67 N.E. 998 (1903); *Hancock v. Maynard*, 72 Ind. App. 661, 126 N.E. 451 (1920).

The superior courts had jurisdiction of an action to enforce the lien provided by statute against automobiles. *Vaught v. Knue*, 64 Ind. App. 467, 115 N.E. 108 (1917).

Terms of Court.

(Terms of court now calendar year, IC 33-1-6-1 — IC 33-1-6-5.)

The Supreme Court knew as a matter of law that January 3, 1931, was within the December, 1930, term of the Marion superior court, Room 2. *State ex rel. Neal v. Superior Court*, 202 Ind. 456, 174 N.E. 732 (1931).

CHAPTER 4

TRANSFER OF ACTION TO CIRCUIT COURT

SECTION.

33-5-4-1. Change of venue.

33-5-4-2. Transfer from circuit court to superior court.

33-5-4-3. Transfer from superior court to circuit court.

SECTION.

33-5-4-4. Transfer from special judge to circuit, superior or probate court.

33-5-4-1. Change of venue. — In all counties wherein may be organized circuit and superior courts, the judge of the superior court may, upon his own motion, transfer any action filed and docketed in such superior court to such circuit court to be redocketed and disposed of as if originally filed with said circuit court in any of the following instances: When any reason for change of venue from the judge of said superior court is shown to exist as now or may be hereafter provided by law, or whenever more cases are filed in said superior court during any term of said court than can be disposed of with expedition, and in all cases where, in the opinion of said superior court, an early disposition of said case is required. [Acts 1911, ch. 14, § 1, p. 26.]

Compiler's Notes. The provision for transfer of causes to the circuit court to alleviate an overloaded superior court docket may be superseded by IC 33-5-4-3.

Cross References. Grounds for change of venue, IC 34-35-1-1.

Transfer of cases to circuit court, IC 33-5-4-3.

Transfer of cases to superior court from circuit court, IC 33-5-4-2.

NOTES TO DECISIONS

ANALYSIS

Effect of unauthorized order.

Legislature's authority to establish superior courts.

Effect of Unauthorized Order.

Where a case has been determined by judgment appointing a receiver, the court is not divested of jurisdiction by an unauthorized order granting plaintiff's application for a change of venue. *State ex rel. Neal v. Superior Court*, 202 Ind. 456, 174 N.E. 732 (1931).

Legislature's Authority to Establish Superior Courts.

The legislature has power, by special act, to

create this court or any court of inferior jurisdiction. *Vickery v. Chase*, 50 Ind. 461 (1875); *Sauer v. Twining*, 81 Ind. 366 (1882); *Stevens v. Anderson*, 145 Ind. 304, 44 N.E. 460 (1896); *Swartz v. Board of County Comm'rs*, 158 Ind. 141, 63 N.E. 31 (1902).

Superior courts may be established by special acts. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

The circuit court is a constitutional court, whereas the superior court is a statutory court established by the general assembly under its authority to provide "such other courts." *State ex rel. Gary Taxpayers' Ass'n v. Lake Superior Court*, 225 Ind. 478, 76 N.E.2d 254 (1947).

33-5-4-2. Transfer from circuit court to superior court. — In all counties with circuit and superior courts, the judge of the circuit court may, with the consent of the judge of the superior court, transfer any action, cause or proceedings filed and docketed in the circuit court to the superior court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the superior court, provided the action, cause or

proceeding could have been originally filed and docketed in the superior court, in any of the following instances:

- (1) Whenever more cases are filed in the circuit court during any year than can be disposed of with expedition.
- (2) In all other cases, where, in the opinion of the circuit court judge, an early disposition of the case is required. [P.L.1-1998, § 56.]

Cross References. Transfer of cases to circuit court from superior court, IC 33-5-4-1, 33-5-4-30.

NOTES TO DECISIONS

Reasons for Transfer.

The circuit court, when certifying a cause to the superior court, was not required to set out

the reasons for the transfer. *Hesler v. Lowe*, 98 Ind. App. 168, 187 N.E. 213 (1933).

33-5-4-3. Transfer from superior court to circuit court. — In all counties with circuit and superior courts, the judge of the superior court may, with the consent of the judge of the circuit court, transfer any action, cause or proceedings filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court, in any of the following instances:

- (1) Whenever more cases are filed in the superior court during any year than can be disposed of with expedition.
- (2) In all other cases where, in the opinion of the superior court judge, an early disposition of the case is required. [P.L.1-1998, § 57.]

Cross References. Transfer of cases to superior court, IC 33-5-4-2.

Transfer of cases to circuit court, IC 33-5-4-1.

NOTES TO DECISIONS

Construction with CR. 13(1).

There is no conflict between the procedure in this section and Rule CR. 13(1). *State ex rel. Wright v. Morgan County Court*, 451 N.E.2d 316 (1983).

Superior court could have handled the problem of a judge's inability to sit as judge in certain criminal cases by proceeding under

Rule CR. 13(1); however, the court was also possessed of authority by virtue of this section to transfer the cases to the circuit court on the basis of a finding that not doing so would "[thwart] an expeditious disposition of this case [and] an early disposition of the case is ... required." *State ex rel. Wright v. Morgan County Court*, 451 N.E.2d 316 (Ind. 1983).

33-5-4-4. Transfer from special judge to circuit, superior or probate court. — Whenever a special judge has been designated in any action, cause or proceeding, and the special judge so designated is the duly elected qualified and acting judge of a circuit, superior or probate court in such county having jurisdiction of the subject matter of the action, cause or proceeding, the regular judge of the court in which the action, cause or proceeding is pending may, after the designation of a special judge, with the consent of the special judge, transfer the action, cause or proceeding to the court presided over by the special judge by transferring all original papers

and instruments filed in the action, cause or proceeding, without further transcript thereof, to be redocketed and disposed of as if originally filed with the court to which the action, cause or proceeding is transferred. [P.L.1-1998, § 58.]

CHAPTER 4.5

ADAMS SUPERIOR COURT

SECTION.

- 33-5-4.5-1. Court established — Seal — Judicial district.
- 33-5-4.5-2. Judge — Election — Term — Eligibility.
- 33-5-4.5-3. Jurisdiction.
- 33-5-4.5-4. Powers of judge.
- 33-5-4.5-5. Bailiff — Court reporter.
- 33-5-4.5-6. Clerk of court — Duties.
- 33-5-4.5-7. Courthouse — Facilities.

SECTION.

- 33-5-4.5-8. Juries — Jury commissioners — Selection of juries.
- 33-5-4.5-9. Transfer of actions.
- 33-5-4.5-10. Authority of circuit and superior court judges to sit in either court.
- 33-5-4.5-11. Standard small claims and misdemeanor division.

33-5-4.5-1. Court established — Seal — Judicial district. — There is established a court of record to be known as the Adams Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Adams Superior Court, Adams County, Indiana.” Adams County comprises the judicial district of the court. [P.L.167-1984, § 43.]

33-5-4.5-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Adams County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Adams County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana.

[P.L.167-1984, § 43.]

33-5-4.5-3. Jurisdiction. — The court has the same jurisdiction as the Adams Circuit Court, except that only the circuit court has juvenile jurisdiction. [P.L.167-1984, § 43.]

33-5-4.5-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Adams Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.167-1984, § 43.]

33-5-4.5-5. Bailiff — Court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Adams Circuit Court. Their salaries shall be paid

monthly out of the treasury of Adams County as provided by law. [P.L.167-1984, § 43.]

33-5-4.5-6. Clerk of court — Duties. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.167-1984, § 43.]

33-5-4.5-7. Courthouse — Facilities. — The court shall hold its sessions in the Adams County courthouse in Decatur, Indiana, or in such other places in the county as the board of county commissioners of Adams County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Adams County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [P.L.167-1984, § 43.]

33-5-4.5-8. Juries — Jury commissioners — Selection of juries. — The jury commissioners appointed by the judge of the Adams Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Adams Circuit Court. The grand jury selected for the Adams Circuit Court shall also serve as the grand jury for the court as may be necessary. [P.L.167-1984, § 43.]

33-5-4.5-9. Transfer of actions. — The judge of the Adams Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.167-1984, § 43.]

33-5-4.5-10. Authority of circuit and superior court judges to sit in either court. — (a) The judge of the Adams circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court.

(b) The judge of the superior court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the superior court was an elected judge of the circuit court. [P.L.167-1984, § 43; P.L.295-1985, § 1.]

33-5-4.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.167-1984, § 43.]

CHAPTER 5

SUPERIOR COURT OF ALLEN COUNTY

33-5-5-1 — 33-5-5-17. [Repealed.]

Compiler's Notes. This chapter, relating to the Allen Superior Court, was repealed by Acts 1971, P.L. 429, § 8. For present law, see IC 33-5-5.1.

Sections 6-11 of Acts 1877, ch. 31 were also repealed by Acts 1969, ch. 191, § 3.

CHAPTER 5.1

ALLEN SUPERIOR COURT

SECTION.

- 33-5-5.1-1. Court created.
- 33-5-5.1-2. Name.
- 33-5-5.1-3. Seal.
- 33-5-5.1-4. Jurisdiction.
- 33-5-5.1-5. Court of record.
- 33-5-5.1-6. Rules and regulations — Incidental powers of judges.
- 33-5-5.1-7. Orders, writs, appointments, commissions.
- 33-5-5.1-8. Personnel — Appointment — Compensation — Powers.
- 33-5-5.1-8.5. Juvenile referee — Salary.
- 33-5-5.1-9. Where court held — Facilities.
- 33-5-5.1-10. Salaries of judges.
- 33-5-5.1-11. Clerk and sheriff.
- 33-5-5.1-12. Clerk and sheriff — Duties, liabilities, fees and procedure.
- 33-5-5.1-13. Fees.
- 33-5-5.1-14. Record books.
- 33-5-5.1-15. Single order book.
- 33-5-5.1-16. Laws applicable to court.
- 33-5-5.1-17. Jury commissioners — Selection of jurors.
- 33-5-5.1-18. Fees of jurors and witnesses.
- 33-5-5.1-19. Appeals.
- 33-5-5.1-20. Process.
- 33-5-5.1-21. [Repealed.]
- 33-5-5.1-21.1. Board of judges — Chief judge — Policy and procedure — Budget.
- 33-5-5.1-22. [Repealed.]
- 33-5-5.1-23. Divisions of the court — Administrative judge — Administration of division.
- 33-5-5.1-24. [Repealed.]
- 33-5-5.1-25. Transfer of cases from circuit court.
- 33-5-5.1-26. Transfer of cases to circuit court.
- 33-5-5.1-27. Authority of circuit judge to sit in superior court.
- 33-5-5.1-28. [Repealed.]
- 33-5-5.1-29. Number of judges — Division assignment — Declaration of candidacy.
- 33-5-5.1-29.1. Election of judges — Term.
- 33-5-5.1-29.3. Qualifications for candidacy.

SECTION.

- 33-5-5.1-29.5. Contributions toward expenses of candidacy.
- 33-5-5.1-30. [Repealed.]
- 33-5-5.1-30.1. Judicial nominating commission — Establishment — Facilities — Reimbursement of expenses.
- 33-5-5.1-31. [Repealed.]
- 33-5-5.1-31.1. Judicial nominating commission — Membership — Effect on eligibility for other positions.
- 33-5-5.1-32. [Repealed.]
- 33-5-5.1-32.1. Appointment of nonattorney commissioners — Terms — Vacancies.
- 33-5-5.1-33. [Repealed.]
- 33-5-5.1-33.1. Election of attorney commissioners — Terms — Vacancies.
- 33-5-5.1-34. [Repealed.]
- 33-5-5.1-34.1. Election procedures — Clerk's duties.
- 33-5-5.1-35. [Repealed.]
- 33-5-5.1-35.1. Notification.
- 33-5-5.1-36. [Repealed.]
- 33-5-5.1-36.1. Tenure in office.
- 33-5-5.1-37. [Repealed.]
- 33-5-5.1-37.1. Meetings — Nomination of judicial candidates.
- 33-5-5.1-38. [Repealed.]
- 33-5-5.1-38.1. Qualifications of nominees — Written evaluations of commission.
- 33-5-5.1-39. [Repealed.]
- 33-5-5.1-39.1. List and evaluations of nominees submitted to governor.
- 33-5-5.1-40. [Repealed.]
- 33-5-5.1-40.1. Removal of candidate's name — Multiple vacancies.
- 33-5-5.1-41. [Repealed.]
- 33-5-5.1-41.1. Selection of judges.
- 33-5-5.1-42. [Repealed.]
- 33-5-5.1-42.1. Effective date of appointment.
- 33-5-5.1-43. [Repealed.]
- 33-5-5.1-43.1. Term of judge filling vacancy.
- 33-5-5.1-44 — 33-5-5.1-71. [Repealed.]

33-5-5.1-1. Court created. — There shall be and is hereby established a superior court in Allen County, Indiana. [IC 33-5-5.1-1, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Jurisdiction of small claims and misdemeanor division, IC 33-5-2-4, IC 33-5-2-8.

Report required of judges of small claims and misdemeanor division, IC 33-10.5-3-6.

33-5-5.1-2. Name. — The court shall be named and styled Allen Superior Court. [IC 33-5-5.1-2, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-3. Seal. — The court shall have a seal consisting of a circular disk containing the words, “Allen Superior Court,” “Indiana,” “Seal,” and such design as the court may determine, an impression of which shall be spread of record upon the order book of the court. [IC 33-5-5.1-3, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-4. Jurisdiction. — (a) The court has the same jurisdiction as the Allen circuit court. Except as provided in subsection (b), the court has exclusive juvenile jurisdiction in Allen County.

(b) The court has concurrent jurisdiction with the Allen circuit court concerning paternity actions. [IC 33-5-5.1-4, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8; 1978, P.L. 136, § 30; P.L.281-1995, § 2.]

33-5-5.1-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-5.1-5, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-6. Rules and regulations — Incidental powers of judges. — The court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and the rules of the Supreme Court of Indiana, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and all legal instruments, and to give all necessary certificates for the authentication of the records and proceedings in the court. [IC 33-5-5.1-6, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-7. Orders, writs, appointments, commissions. — The court shall have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writs of habeas corpus, to appoint receivers, masters, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof. [IC 33-5-5.1-7, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-8. Personnel — Appointment — Compensation — Powers. — (a) The court may appoint such number of probate commissioners,

juvenile referees, bailiffs, court reporters, probation officers, and such other personnel, including but not limited to an administrative officer, as shall in the opinion of the court be necessary to facilitate and transact the business of the court. In addition to the personnel authorized under this subsection and IC 31-31-3, the judges of the Allen superior court-civil division may jointly appoint not more than two (2) full-time magistrates under IC 33-4-7 to serve the Allen superior court-civil division. The judges of the Allen superior court-civil division may jointly assign any such magistrates the duties and powers of a probate commissioner. In addition to the personnel authorized under this subsection and IC 31-31-3, the judge of the Allen superior court-criminal division may jointly appoint not more than two (2) full-time magistrates under IC 33-4-7 to serve the Allen superior court-criminal division. Any such magistrate serves at the pleasure of, and continues in office until jointly removed by, the judges of the division that appointed the magistrate. All appointments made under this subsection shall be made without regard to the political affiliation of the appointees. The salaries of the above personnel shall be fixed and paid as provided by law. If the salaries of any of the above personnel are not provided by law, the amount and time of payment of such salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor, upon the order of the court, and be entered of record. The officers and persons so appointed shall perform such duties as are prescribed by the court. Any such administrative officer appointed by the court shall operate under the jurisdiction of the chief judge and shall serve at the pleasure of the chief judge. Any such probate commissioners, magistrates, juvenile referees, bailiffs, court reporters, probation officers, and other personnel appointed by the court shall serve at the pleasure of the court.

(b) Any probate commissioner so appointed by the court may be vested by said court with all suitable powers for the handling and management of the probate and guardianship matters of the court, including the fixing of all bonds, the auditing of accounts of estates and guardianships and trusts, acceptance of reports, accounts, and settlements filed in said court, the appointment of personal representatives, guardians, and trustees, the probating of wills, the taking and hearing of evidence on or concerning such matters, or any other probate, guardianship, or trust matters in litigation before such court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, including the taking and hearing of evidence together with such commissioner's findings and conclusions regarding the same, all of such matters, nevertheless, to be under the final jurisdiction and decision of the judges of said court.

(c) Any juvenile referee so appointed by the court may be vested by said court with all suitable powers for the handling and management of the juvenile matters of the court, including the fixing of bonds, the taking and hearing of evidence on or concerning any juvenile matters in litigation before the court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, all of such matters, nevertheless, to be under final jurisdiction and decision of the judges of said court.

(d) For any and all the foregoing purposes, any probate commissioner and juvenile referee shall have the power to summon witnesses to testify before the said commissioner and juvenile referee, to administer oaths and take acknowledgments in connection with and in furtherance of said duties and powers. [IC 33-5-5.1-8, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8; P.L.18-1995, § 22; P.L.1-1997, § 123.]

Cross References. Court reporters, IC 33-15-23-1 — IC 33-15-23-7.

of administrator to bring action for damages, IC 29-1-10-18.

Nonresident, wrongful death, appointment

33-5-5.1-8.5. Juvenile referee — Salary. — Each juvenile referee appointed under section 8 [33-5-5.1-8] of this chapter, who:

(1) Is appointed by the court to serve as a full-time referee; and

(2) Does not practice law during his term as referee;

shall receive an annual salary as provided in IC 33-13-12-8.2. [IC 33-5-5.1-8-5, as added by Acts 1980, P.L. 189, § 1; P.L.292-1983, § 4.]

33-5-5.1-9. Where court held — Facilities. — The Allen Superior Court shall hold its sessions in the Allen County court house in the city of Fort Wayne, state of Indiana, and in such other places in Allen County as the court may from time to time determine. The board of county commissioners of Allen County shall provide and maintain in the court house, and at such other places in Allen County as the court may determine, suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, and other court officers and personnel, and such other facilities as may be necessary. The board of county commissioners of Allen County shall also provide all necessary furniture and equipment for rooms and offices of the court. [IC 33-5-5.1-9, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-10. Salaries of judges. — The judges of the court shall receive the same salary as is now, or may hereafter be provided by law to be paid to the judge of the Allen Circuit Court, which salary shall be paid at the time and in the same manner as the judge of the Allen Circuit Court is now paid. [IC 33-5-5.1-10, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Salaries of judges, IC 33-13-12-2 — IC 33-13-12-11.

33-5-5.1-11. Clerk and sheriff. — The clerk of the Allen Circuit Court and the sheriff of Allen County shall be the clerk and sheriff, respectively, of the court. [IC 33-5-5.1-11, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-12. Clerk and sheriff — Duties, liabilities, fees and procedure. — The clerk and sheriff shall attend said court and discharge all the duties pertaining to their respective offices as they are now or may hereafter be required to do, by law, in the circuit court; and all laws now in force, or which may be enacted, prescribing the duties and liabilities of such officers,

and the mode of proceeding against them, or either of them for neglect of official duty, allowing fees and providing for the collection thereof, in the circuit court, shall be held and deemed to extend to the Allen Superior Court, as far as they apply. In any case in the Allen Superior Court based upon a violation of a city ordinance where fines or forfeitures, or both, are adjudged against a party, the fines or forfeitures, or both, shall be paid to and collected by the clerk and regularly remitted to the city clerk of the city which issued the ordinance and the city clerk shall disburse the same as is now, or may hereafter be, required by law. Payment of fines for admitted parking violations shall be made to the city clerk of the city which issued the ordinances concerning parking violations. [IC 33-5-5.1-12, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8; 1972, P.L. 208, § 1.]

33-5-5.1-13. Fees. — The same fees shall be taxed in said court as are now or may hereafter be provided by law to be taxed in the circuit court, and said fees, when collected, shall be disbursed in the same manner as like fees are disbursed in the circuit court. [IC 33-5-5.1-13, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Clerk of circuit court, schedule of fees, IC 33-19-3.

33-5-5.1-14. Record books. — The clerk, under the direction of the court, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for the court, and all books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts. [IC 33-5-5.1-14, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-15. Single order book. — The court shall maintain a single order book for the entire court, which order book may be signed on behalf of the court by any of the judges of said court, and such signature shall be due authentication of the actions of each of the judges in the court. [IC 33-5-5.1-15, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-16. Laws applicable to court. — All laws of the state of Indiana and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [IC 33-5-5.1-16, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-17. Jury commissioners — Selection of jurors. — The clerk of the Allen Circuit Court and the jury commissioners appointed by the Allen Circuit Court shall serve as jury commissioners for this court and shall be governed in all respects as now or may hereafter be provided for the

selection of jurors and the issuing and servicing of process: Provided, That said jurors need not serve in any particular order in which they are drawn by the jury commissioners: Provided, further, That any judge of the court may order the selection and summoning of other jurors for the court whenever the same may be necessary, and they shall serve the entire court and before any judge of the court where their service may be required. [IC 33-5-5.1-17, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Selection, qualifications and summoning of jurors for the circuit court, IC 33-4-5.

33-5-5.1-18. Fees of jurors and witnesses. — Jurors and witnesses in attendance upon the court shall receive the same fees as are now or may hereafter be provided for by law for jurors and witnesses in the circuit court. [IC 33-5-5.1-18, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Juror fees and mileage, IC 33-19-1-4.

33-5-5.1-19. Appeals. — Any party may appeal from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. [IC 33-5-5.1-19, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-20. Process. — The process of the court shall have the seal affixed and be attested, directed, served, and returned, and be in the form as is, or may be, provided for process issuing from the circuit court. [IC 33-5-5.1-20, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Process from circuit court, Rules TR. 3, 4 — 4.17.

33-5-5.1-21. [Repealed.]

Compiler's Notes. This section, concerning the chief judge, was repealed by P.L.168-1984, § 6. For present law, see IC 33-5-5.1-21.1.

33-5-5.1-21.1. Board of judges — Chief judge — Policy and procedure — Budget. — (a) The court shall be governed and operated by a board of judges, which is composed of all of the judges of the superior court. Six (6) judges are required for a quorum for conducting business and as a majority for taking action. Every two (2) years the board of judges shall elect a chief judge to carry out such ministerial functions of representation as the board of judges periodically determines by a majority of the board's members.

(b) Matters of administration, budget, expenditures, policy, and procedure affecting the entire court shall be determined by a majority of the board of judges. Any such determination shall bind the entire board of judges and each judge thereof.

(c) One (1) budget covering all the divisions of the court shall be prepared for the court and submitted to the county fiscal body. However, each division shall prepare its own budget as a component of the superior court's total budget. [P.L.168-1984, § 1; P.L.296-1985, § 1; P.L.203-1997, § 1.]

33-5-5.1-22. [Repealed.]

Compiler's Notes. This section, concerning action by entire court, was repealed by P.L.168-1984, § 6.

33-5-5.1-23. Divisions of the court — Administrative judge — Administration of division. — (a) The court, by rules adopted by the court, shall divide the work of the court into the following divisions:

(1) A family relations division.

(2) A criminal division (including a standard minor offenses and violations docket under IC 33-5-2-8).

(3) A civil division (including a standard small claims docket under IC 33-5-2-4).

(b) Cases involving juvenile matters shall be assigned to the family relations division.

(c) Cases involving matters specified in IC 33-5-2-8 shall be assigned to the criminal division.

(d) Cases involving matters specified in IC 33-5-2-4 shall be assigned to the small claims docket in the civil division.

(e) The work of each division may be divided further by rules adopted by the court.

(f) Every two (2) years each division of the court shall elect an administrative judge for that division. The administrative judge shall carry out such ministerial, administrative, and assignment functions as are periodically determined by a majority of the judges of that division.

(g) Matters of administration, budget, expenditures, policy, and procedure in each division shall be determined by a majority of the judges of that division.

(h) Disputes within any division concerning administration, budget, expenditures, policy, procedure, and assignments that pertain to the division as a whole or to any individual judge of the division, that for any reason cannot be resolved by a majority of the judges in the division shall be submitted to the board of judges and determined by a majority of the board of judges.

(i) A resolution approved by a majority of the board of judges that resolves disputes within a division must include at least one (1) of the judges of that division and shall bind all of the judges of that division. [IC 33-5-5.1-23, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8; P.L.301-1983, § 1; P.L.167-1984, § 44; P.L.203-1997, § 2.]

33-5-5.1-24. [Repealed.]

Compiler's Notes. This section, concerning the abolition of certain courts, was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29.

33-5-5.1-25. Transfer of cases from circuit court. — The judge of the circuit court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [IC 33-5-5.1-25, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-5.1-26. Transfer of cases to circuit court. — Any judge of this court may, with the consent of the judge of the circuit court, transfer any action, cause or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court. [IC 33-5-5.1-26, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-27. Authority of circuit judge to sit in superior court. — The judge of the Allen Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this court with all the rights and powers as if he were a duly appointed judge of this court. [IC 33-5-5.1-27, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8.]

33-5-5.1-28. [Repealed.]

Compiler's Notes. This section, concerning incumbent judges, was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29.

33-5-5.1-29. Number of judges — Division assignment — Declaration of candidacy. — (a) The Allen County superior court consists of nine (9) judges. Two (2) judges serve in the family relations division, three (3) judges serve in the criminal division, and four (4) judges serve in the civil division. Each newly elected or appointed judge assumes the division assignment of the judge whom the judge replaces.

(b) If, at any time, in the opinion of a majority of the judges, there is an undue disparity in the number of cases in any division, the chief judge may assign specific cases normally assigned to that division to a judge in another division as a majority of the judges direct.

(c) During the period under IC 3-8-2-4 in which a declaration of candidacy may be filed for a primary election, any person desiring to become a candidate for one (1) of the Allen superior court judgeships must file with the

election division a declaration of candidacy adapted from the form prescribed under IC 3-8-2 that:

- (1) is signed by the candidate; and
- (2) designates the division and the name of the incumbent judge of the judgeship that the candidate seeks.

(d) A petition without the designation required under subsection (c) shall be rejected by the election division (or by the Indiana election commission under IC 3-8-1-2). [IC 33-5-5.1-29, as added by Acts 1971, P.L. 429, § 1; 1972, P.L. 10, § 8; 1978, P.L. 141, § 4; 1982, P.L. 181, § 7; P.L.301-1983, § 2; P.L.168-1984, § 2; P.L.334-1989(ss), § 12; P.L.7-1990, § 54; P.L.3-1997, § 446.]

33-5-5.1-29.1. Election of judges — Term. — (a) All candidates for each respective Allen superior court judgeship shall be listed on the general election ballot in the form prescribed by IC 3-11-2, without party designation. The candidate receiving the highest number of votes for each judgeship shall be elected to that office.

(b) IC 3, except where inconsistent with this chapter, applies to elections held under this chapter.

(c) The term of each Allen superior court judge:

- (1) Begins January 1 following election and ends December 31 following the election of a successor; and
- (2) Is six (6) years.

[IC 33-5-5.1-29.1, as added by P.L.301-1983, § 3; P.L.5-1986, § 17; P.L.3-1987, § 532.]

33-5-5.1-29.3. Qualifications for candidacy. — (a) To qualify as a candidate for Allen Superior Court judge, a person:

- (1) Must be a citizen of the United States domiciled in Allen County;
- (2) Must have at least five (5) years active practice of law, including cases involving matters assigned to the division in which he would serve as judge;
- (3) May not previously have had any disciplinary sanction imposed upon him by the Supreme Court disciplinary commission of Indiana or any similar body in another state; and
- (4) May not previously have been convicted of any felony.

(b) If a person does not qualify under subsection (a), he may not be listed on the ballot as a candidate. However, an individual who was a judge of the court on January 1, 1984, does not have to comply with the requirements of subsection (a)(2). [IC 33-5-5.1-29.3, as added by P.L.301-1983, § 4; P.L.168-1984, § 3.]

33-5-5.1-29.5. Contributions toward expenses of candidacy. — (a) As used in this section:

- (1) "Contribution" has the meaning given in IC 3-5-2-15;
- (2) "Political action committee" has the meaning given in IC 3-5-2-37; and
- (3) "Regular party committee" has the meaning given in IC 3-5-2-42.

(b) No judge or candidate for judge of the Allen superior court may:

- (1) Accept a contribution from any political party, political action committee, or regular party committee; or
- (2) Accept more than a total of ten thousand dollars (\$10,000) in contributions from all sources to pay expenses connected with his candidacy. [IC 33-5-5.1-29.5, as added by P.L.301-1983, § 5; P.L.5-1986, § 18.]

33-5-5.1-30. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-30.1. Judicial nominating commission — Establishment — Facilities — Reimbursement of expenses. — There is hereby established a judicial nominating commission for the Allen Superior Court. The board of county commissioners of Allen County shall provide all facilities, equipment, supplies and services necessary for the administration of the duties of this commission. The members of the commission shall serve without compensation. However, the board of commissioners shall reimburse members of the commission for actual expenses incurred in performing their duties. [IC 33-5-5.1-30.1, as added by P.L. 301-1983, § 6.]

33-5-5.1-31. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-31.1. Judicial nominating commission — Membership — Effect on eligibility for other positions. — (a) The judicial nominating commission shall consist of seven (7) members, the majority of whom shall form a quorum. The chief justice of the supreme court (or a justice of the supreme court or judge of the court of appeals designated by the chief justice) shall be a member and shall act as chairman. Persons who are admitted to the practice of law and who reside in Allen County shall, pursuant to sections 33.1 and 34.1 [IC 33-5-5.1-33.1 and IC 33-5-5.1-34.1] of this chapter, elect three (3) of their number to serve as members of the commission. The governor shall also appoint to the commission three (3) residents of Allen County who are not admitted to the practice of law. However, no more than two (2) of these appointees may be from the same political party. If the governor fails to appoint any of the nonattorney commission members within the time required under section 32.1 [IC 33-5-5.1-32.1] of this chapter, the appointment shall be made by the chief justice of the supreme court.

(b) No member of the commission other than a judge or justice may hold any other salaried public office, and no member may hold an office in a political party or organization. A member of the commission is ineligible for appointment to a judicial office in Allen County while he is a member of the commission and for three (3) years thereafter. If any member of the commission other than a judge or justice terminates his residence in Allen

County, he shall be considered to have resigned from the commission. [IC 33-5-5.1-31.1, as added by P.L.301-1983, § 7.]

33-5-5.1-32. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-32.1. Appointment of nonattorney commissioners — Terms — Vacancies. — (a) The governor shall appoint the three (3) nonattorney members of the commission.

(b) One (1) month prior to the expiration of a term of office of a nonattorney commissioner, the governor shall either reappoint the commissioner or appoint a replacement. All appointments shall be certified to the secretary of state, the clerk of the supreme court and the clerk of Allen superior court within ten (10) days after the appointment.

(c) After their initial terms, the governor shall appoint each nonattorney commissioner for a term of four (4) years.

(d) Whenever a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing of that fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the governor within sixty (60) days after he has notice of the vacancy. The nonattorney commissioner appointed shall serve during the unexpired term of the member whose vacancy he has filled. [IC 33-5-5.1-32.1, as added by P.L.301-1983, § 8.]

33-5-5.1-33. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-33.1. Election of attorney commissioners — Terms — Vacancies. — (a) Persons who are admitted to the practice of law and who reside in Allen County (referred to as "attorney electors") shall elect three (3) of their number to the commission. The term of office of each elected attorney member shall be four (4) years, commencing on the first day of October following his election. The election day is the first Tuesday in September, 1983, and every four (4) years thereafter. During the month prior to the expiration of each attorney commissioner's term of office, an election shall be held to fill the succeeding four (4) year term of office.

(b) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner shall be filled for the unexpired term by a special election. [IC 33-5-5.1-33.1, as added by P.L.301-1983, § 9.]

33-5-5.1-34. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-34.1. Election procedures — Clerk’s duties. — The attorney members of the commission shall be elected by the following process:

(a) The clerk of the superior court shall, at least ninety (90) days prior to the date of election, notify all attorneys in Allen County of the election by mail, informing them that nominations must be made to the clerk of the superior court at least sixty (60) days prior to the election.

(b) A nomination in writing, accompanied by a signed petition, of ten (10) attorney electors and the written consent of the qualified nominee, shall be filed by an attorney elector in the office of the clerk at least sixty (60) days prior to the election.

(c) The clerk shall prepare and print ballots containing the names and residence addresses of all attorney nominees whose written nominations, petitions and written statements of consent have been received sixty (60) days prior to the election.

(1) The ballot shall read:

“ALLEN SUPERIOR COURT
NOMINATING COMMISSION BALLOT

To be cast by individuals residing in Allen County and admitted to the practice of law in Indiana. Vote for not more than three (3) of the following candidates for terms commencing _____.

(Name)	(Address)
(Name)	(Address)
(etc.)	(etc.)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the clerk of Allen Superior Court not later than _____.

DESTROY BALLOT IF NOT USED”

(2) The three (3) nominees receiving the most votes shall be elected.

(d) The clerk shall also supply with each ballot distributed by the clerk a certificate, to be completed and signed and returned by the attorney elector voting the ballot, certifying that the attorney elector is admitted to the practice of law in Indiana, that the attorney elector resides in Allen County, and that the attorney elector voted the ballot returned. A ballot not accompanied by the signed certificate of the voter may not be counted.

(e) A separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope may not be opened until the counting of the ballots.

(f) The clerk of the superior court shall mail a ballot and its accompanying material to all qualified electors at least two (2) weeks before the date of election.

(g) Upon receiving the completed ballots and the accompanying certificates, the clerk shall ensure that the certificates have been completed in compliance with this chapter. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(h) The clerk, with the assistance of the Allen County election board, shall open and canvass all ballots after 4 p.m. on the day of the election in the office of the clerk of Allen superior court. No ballots received after 4 p.m. are to be counted unless the chairman of the judicial nominating commission orders an extension of time because of extraordinary circumstances. Upon canvassing the ballots the clerk shall place all ballots in their package. These, along with the certificates, shall be retained in the clerk's office for a period of six (6) months, and the clerk may not permit anyone to inspect them except upon an order of the Court of Appeals.

(i) If two (2) or more nominees are tied so that one (1) additional vote cast for one (1) of them would give that nominee a plurality, the canvassers shall resolve the tie by lot and the winner of the lot shall be deemed to have been elected. [IC 33-5-5.1-34.1, as added by P.L.301-1983, § 10; P.L.18-1995, § 23.]

33-5-5.1-35. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-35.1. Notification. — After the attorney members of the commission have been elected, and after the names of the nonattorney commissioners appointed by the governor have been certified to the secretary of state, the clerk of the Supreme Court, and the clerk of Allen Superior Court, the superior court clerk shall notify the members of the commission of their election or appointment. [IC 33-5-5.1-35.1, as added by P.L.301-1983, § 11.]

33-5-5.1-36. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-36.1. Tenure in office. — A member of the commission shall serve until his successor is appointed or elected. An attorney commissioner or nonattorney commissioner is not eligible for more than two (2) successive reelections or reappointments. [IC 33-5-5.1-36.1, as added by P.L.301-1983, § 12.]

33-5-5.1-37. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-37.1. Meetings — Nomination of judicial candidates. — (a) When a judge of the superior court dies, resigns, is removed from office, or is for any reason ineligible to continue or incapable of continuing in office until the end of his term in office, a judge in another division may within thirty (30) days after the vacancy occurs transfer to the vacant position for the remainder of the transferring judge's term. A judge who has made one (1) transfer is ineligible to make any other transfers. If more than one (1)

judge desires to transfer, the most senior of these judges is entitled to transfer. After a transfer, or the thirty (30) day period if no transfer is made, the commission shall meet to nominate three (3) candidates to fill the unexpired term of the vacancy caused by the transferring judge or the original vacancy if no transfer is made.

(b) The clerk shall promptly notify the members of the commission of a vacancy that the commission must fill under subsection (a), and the chairman shall call a meeting of the commission within ten (10) days following that notice. The commission shall submit its nominations of three (3) candidates for the vacancy and shall certify them to the governor no later than sixty (60) days after the vacancy occurred. When it is known that a vacancy will occur at a definite future date within the term of the governor then serving, the clerk shall notify the chairman and each member of the commission immediately, and the chairman shall call a meeting of the commission within ten (10) days following that notice. The commission may thereafter submit its nominations of three (3) candidates for each impending vacancy and shall certify them to the governor.

(c) Meetings of the commission shall be called by its chairman, or, if he fails to call a necessary meeting, upon the call of any four (4) members of the commission. Written notice of a meeting shall be given by mail to each member of the commission at least five (5) days before the meeting, unless the commission at its previous meeting designated the time and place of its next meeting.

(d) Meetings of the commission shall be held in the Allen County courthouse or in another public building in Allen County designated by the commission.

(e) The commission shall act only at a meeting and may act only by the concurrence of a majority of its members attending a meeting. The commission may adopt rules for the conduct of its proceedings and the discharge of its duties. [IC 33-5-5.1-37.1, as added by P.L.301-1983, § 13; P.L.168-1984, § 4; P.L.209-1996, § 5.]

33-5-5.1-38. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-38.1. Qualifications of nominees — Written evaluations of commission. — In selecting the three (3) nominees to be submitted to the governor, the commission shall comply with the following requirements:

(a) The commission shall submit only the names of the three (3) most highly qualified candidates from among all those eligible individuals considered. To be eligible for nomination as a judge of the Allen Superior Court, a person must meet the qualifications listed in section 29.3 [IC 33-5-5.1-29.3] of this chapter.

(b) As an aid in choosing the three (3) most qualified candidates, the commission shall in writing evaluate each eligible individual it considers on the following factors:

- (1) Law school record, including any academic honors and achievements.
 - (2) Contributions to scholarly journals and publications, legislative draftings, and legal briefs.
 - (3) Activities in public service, including:
 - (A) Writings and speeches concerning public or civic affairs which are on public record, including campaign speeches or writing, letters to newspapers, and testimony before public agencies;
 - (B) Government service;
 - (C) Efforts and achievements in improving the administration of justice; and
 - (D) Other conduct relating to his profession.
 - (4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge.
 - (5) Probable judicial temperament.
 - (6) Physical condition, including age, stamina, and possible habitual intemperance.
 - (7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness and dedication.
 - (8) Membership on boards of directors, financial interest, and any other consideration which might create conflict of interest with a judicial office.
 - (9) Any other pertinent information that the commission feels is important in selecting the best qualified individuals for judicial office.
- (c) An individual may not be evaluated before he states in writing that he desires to hold a judicial office that is or will be created by a vacancy.
- (d) The political affiliations of a candidate may not be considered. [IC 33-5-5.1-38.1, as added by P.L.301-1983, § 14.]

33-5-5.1-39. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-39.1. List and evaluations of nominees submitted to governor. — The commission shall submit to the governor, with its list of nominees, its written evaluation of the qualifications of each nominee. [IC 33-5-5.1-39.1 as added by P.L.301-1983, § 15.]

33-5-5.1-40. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-40.1. Removal of candidate's name — Multiple vacancies. — After the commission has nominated and submitted to the governor the names of three (3) nominees, any name may be withdrawn for a cause considered by the commission to substantially affect the nominee's qualifications to hold office, and another name or names may be substituted at any

time before the appointment is made to fill the vacancy. If a nominee dies or requests in writing that his name be withdrawn, the commission shall nominate another person to replace him. Whenever there exists [exist] at the same time two (2) or more vacancies, the commission shall nominate and submit to the governor a list of three (3) different persons for each of the vacancies. Before an appointment is made, the commission may withdraw the lists of nominations and change the names of any persons nominated from one (1) list to another, or may substitute a new name for any of those previously nominated. [IC 33-5-5.1-40.1, as added by P.L.301-1983, § 16.]

Compiler's Notes. The bracketed word "exist" in the third sentence was inserted by the compiler.

33-5-5.1-41. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-41.1. Selection of judges. — (a) A vacancy created by a superior court judge's departure from office before the expiration of his term in office that is not filled by a transfer under section 37.1(a) [IC 33-5-5.1-37.1(a)] of this chapter shall be filled by appointment of the governor from the list of nominees. If the governor fails to make an appointment from the list within sixty (60) days after it is presented to him, the appointment shall be made by the chief justice of the Supreme Court from the same list.

(b) The governor shall make all appointments to the Allen Superior Court without regard to the political affiliation of any of the nominees, and shall consider only those qualifications included in section 38.1 [IC 33-5-5.1-38.1] of this chapter. [IC 33-5-5.1-41.1, as added by P.L.301-1983, § 17; P.L.168-1984, § 5.]

33-5-5.1-42. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-42.1. Effective date of appointment. — An appointment to the Allen superior court for the remainder of a departing judge's term in office shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if the vacancy does not yet exist. [IC 33-5-5.1-42.1, as added by P.L.301-1983, § 18.]

33-5-5.1-43. [Repealed.]

Compiler's Notes. This section was repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1-29 — IC 33-5-5.1-43.1.

33-5-5.1-43.1. Term of judge filling vacancy. — A judge appointed under section 41.1 [IC 33-5-5.1-41.1] of this chapter shall serve during the

unexpired part of his predecessor's term in office. [IC 33-5-5.1-43.1, as added by P.L.301-1983, § 19.]

33-5-5.1-44 — 33-5-5.1-71. [Repealed.]

Compiler's Notes. These sections, concerning judges, were repealed by Acts 1982, P.L. 181, § 8. For present law, see IC 33-5-5.1.

CHAPTER 6

ALLEN COUNTY COURT NO. 2

33-5-6-1 — 33-5-6-19. [Repealed.]

Compiler's Notes. This chapter, establishing Allen County Superior Court No. 2, was

repealed by Acts 1971, P.L. 429, § 2. For present law, see IC 33-5-5.1.

CHAPTER 7

ALLEN SUPERIOR COURT NO. 3

33-5-7-1 — 33-5-7-7. [Repealed.]

Compiler's Notes. This chapter, establishing Allen Superior Court No. 3, was repealed

by Acts 1971, P.L. 429, § 2. For present law, see IC 33-5-5.1.

CHAPTER 8

BARTHOLOMEW SUPERIOR COURT

SECTION.

33-5-8-1. Courts created — Judge.

33-5-8-2. Names of courts.

33-5-8-3. Clerk and sheriff — Duties — Bailiff and reporter.

33-5-8-4. Where court held — Provisions by commissioners — Jury commissioners.

33-5-8-5. Jurisdiction.

SECTION.

33-5-8-6. Rules — Incidental powers of judge.

33-5-8-7. Transfer of actions or proceedings.

33-5-8-8. Authority of circuit and superior court judges to sit in either court.

33-5-8-9. Standard small claims and misdemeanor division.

33-5-8-10. Magistrate.

33-5-8-1. Courts created — Judge. — (a) There is hereby created a superior court in and for the county of Bartholomew, Indiana, which shall consist of one (1) judge, who shall hold office for six (6) years, beginning on the first day of January after election and ending December 31 following the election of the judge's successor. Every six (6) years, the voters of Bartholomew County shall elect at the general election a judge for the superior court.

(b) An additional court of record is established to be known as the Bartholomew superior court No. 2. The Bartholomew superior court No. 2 has one (1) judge, who shall be elected at the general election every six (6) years in Bartholomew County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(c) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Bartholomew County;
 - (2) Be under seventy (70) years of age at the time of taking office; and
 - (3) Be admitted to the practice of law in Indiana.
- [Acts 1955, ch. 23, § 1; 1976, P.L. 133, § 1; P.L.188-1986, § 1.]

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

33-5-8-2. Names of courts. — The superior courts shall be styled “Bartholomew Superior Court No. 1” and “Bartholomew Superior Court No. 2”, and the county of Bartholomew shall constitute the judicial district of the courts. The courts shall be courts of record and general jurisdiction and shall each have a seal containing the words, “Bartholomew Superior Court No. 1 of Bartholomew County, Indiana”, and “Bartholomew Superior Court No. 2 of Bartholomew County, Indiana” respectively. [Acts 1955, ch. 23, § 2; P.L.188-1986, § 2.]

33-5-8-3. Clerk and sheriff — Duties — Bailiff and reporter. — (a) The clerk of the Bartholomew circuit court shall be the clerk of the Bartholomew superior courts and the sheriff of Bartholomew County shall be the sheriff of the Bartholomew superior courts. The clerk and sheriff shall attend the courts and discharge all the duties pertaining to their respective offices as they are now or may hereafter be required to do by law with reference to the Bartholomew circuit court.

(b) The judges of the courts shall appoint a bailiff and an official court reporter for each court to serve as such during the pleasure of the court, and the judge shall fix their per diem or salary within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters, and the same shall be paid monthly out of the treasury of Bartholomew County in the manner provided by law. The salary of judge of each court shall be the same as is provided by law for judges of superior courts. [Acts 1955, ch. 23, § 3; P.L.188-1986, § 3.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-8-4. Where court held — Provisions by commissioners — Jury commissioners. — (a) The courts shall hold sessions in the Bartholomew County courthouse in the city of Columbus, Indiana, and the board of commissioners of the county of Bartholomew shall provide and maintain in the courthouse a suitable and convenient courtroom for the holding of each court, together with a suitable and convenient jury room, and offices for the presiding judge and the official court reporter and shall provide all necessary furniture and equipment for the rooms and offices and all necessary dockets, books, and records for the courts.

(b) The jury commissioners appointed by the judge of the Bartholomew circuit court shall serve as the jury commissioners for the superior courts. Juries shall be selected in the same manner as juries for the Bartholomew circuit court. The grand jury selected for the Bartholomew circuit court shall

also serve as the grand jury for the superior courts as may be necessary. [Acts 1955, ch. 23, § 5; P.L.188-1986, § 4.]

33-5-8-5. Jurisdiction. — The Bartholomew superior courts have concurrent jurisdiction, both original and appellate, with the Bartholomew circuit court in all civil actions and proceedings at law and in equity and in all criminal and probate matters, actions, and proceedings of which the Bartholomew circuit court has jurisdiction. However, the Bartholomew circuit court shall have exclusive jurisdiction in all juvenile matters, actions, and proceedings. [Acts 1955, ch. 23, § 6; P.L.188-1986, § 5.]

33-5-8-6. Rules — Incidental powers of judge. — The judges of the Bartholomew superior courts shall have full power and authority to make and adopt rules for conducting the business of the Bartholomew superior courts and not repugnant to the laws of the state of Indiana, or rules of the supreme court of the state of Indiana, and shall have all powers incident to a court of record in relation to the attendance of witnesses, punishment of contempt, and to enforce its orders. The judges of each court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of records and proceedings of each court, and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1955, ch. 23, § 7; P.L.188-1986, § 6.]

33-5-8-7. Transfer of actions or proceedings. — The judge of the Bartholomew circuit court may, with the consent of the judge of a superior court, transfer any action or proceeding from the circuit court to the superior court. The judge of a superior court may, with the consent of the judge of the circuit court or other superior court, transfer any action or proceeding from that superior court to the circuit or other superior court. [P.L.188-1986, § 7.]

33-5-8-8. Authority of circuit and superior court judges to sit in either court. — The judge of the Bartholomew circuit court may, with the consent of the judge of a superior court, sit as a judge of the superior court in any matter as if the judge of the circuit or other superior court was an elected judge of the superior court. The judge of a superior court may, with the consent of the judge of the circuit or other superior court, sit as a judge of the circuit or other superior court in any matter as if the judge of the superior court was an elected judge of the circuit or other superior court. [P.L.188-1986, § 8.]

33-5-8-9. Standard small claims and misdemeanor division. — The Bartholomew Superior Court No. 2 has a standard small claims and misdemeanor division. [P.L.188-1986, § 9.]

33-5-8-10. Magistrate. — (a) The judge of Bartholomew superior court No. 2 may appoint one (1) full-time magistrate to serve Bartholomew superior court No. 2.

(b) The magistrate continues in office until removed by the judge of Bartholomew superior court No. 2. [P.L.40-1990, § 14.]

CHAPTER 9

BOONE SUPERIOR COURT

SECTION.

33-5-9-1. Courts established — Judges — Term — Election — Qualifications.

33-5-9-2. Name — Jurisdiction — Seal.

33-5-9-3. Bailiff and court reporter — Salaries.

33-5-9-4. Where court held — County commissioners to make provision — Appropriations by county council.

33-5-9-5. Concurrent jurisdiction with circuit court — Exceptions.

33-5-9-6. [Repealed.]

33-5-9-7. Restriction on transfer of causes.

33-5-9-8. Transfer of causes pending in wrong court — Change of venue of transferred causes — Transcript.

33-5-9-9. Change of venue — Filing causes received on change of venue.

SECTION.

33-5-9-10. Courts of record and general jurisdiction.

33-5-9-11. Same powers as circuit courts — Rules and regulations — Incidental powers of judge.

33-5-9-12. Process — Authority of courts and judges.

33-5-9-13. Applicability of Supreme Court rules.

33-5-9-14. Jury commissioners — Summoning jury.

33-5-9-15. [Repealed.]

33-5-9-16. Records and stationery.

33-5-9-17. No authority to impanel grand jury.

33-5-9-18. Authority of circuit and superior court judges to sit in either court.

33-5-9-19. Standard small claims and misdemeanor division.

33-5-9-1. Courts established — Judges — Term — Election — Qualifications. — (a) There is established a superior court No. 1 in the county of Boone, Indiana, which shall consist of one (1) judge, who shall hold his office for a term of six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified. Every six (6) years, the voters of Boone County shall elect at the general election a judge for the superior court.

(b) An additional court is established to be known as the Boone superior court No. 2. The Boone superior court No. 2 has one (1) judge, who is elected at the general election every six (6) years in Boone County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(c) To be eligible to hold office as a judge of a Boone superior court, a person must be:

(1) A resident of Boone County;

(2) Under seventy (70) years of age at the time of taking office; and

(3) Admitted to the practice of law in Indiana.

[Acts 1965, ch. 240, § 1; 1976, P.L. 133, § 2; P.L.186-1986, § 2.]

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

33-5-9-2. Name — Jurisdiction — Seal. — The superior courts shall be known as the "Boone superior court No. 1" and the "Boone superior court No. 2". The county of Boone shall constitute the judicial district of the courts.

The courts shall be courts of record and general jurisdiction, and shall each have a seal containing the words "Boone Superior Court No. 1 of Boone County, Indiana" and "Boone Superior Court No. 2 of Boone County, Indiana", respectively. [Acts 1965, ch. 240, § 2; P.L.186-1986, § 3.]

33-5-9-3. Bailiff and court reporter — Salaries. — The judges of the courts shall appoint a bailiff and an official court reporter for each court, to serve as such during the pleasure of the court; and the judges shall fix their compensation within the limits and in the manner as may be provided by law concerning the bailiff and official court reporter of Boone circuit court; and the compensation shall be paid monthly out of the treasury of Boone County in the manner provided by law. [Acts 1965, ch. 240, § 3; P.L.186-1986, § 4.]

Cross References. Salary of bailiff, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-9-4. Where court held — County commissioners to make provision — Appropriations by county council. — The Boone superior courts shall hold session in the Boone County courthouse in the city of Lebanon, Indiana. The board of county commissioners of Boone County shall provide and maintain in the courthouse suitable and convenient courtrooms for the holding of each court, with suitable and convenient jury rooms and offices for the judges and the official court reporters. The county council shall appropriate sufficient funds for the courts. [Acts 1965, ch. 240, § 5; P.L.186-1986, § 5.]

33-5-9-5. Concurrent jurisdiction with circuit court — Exceptions. — The superior courts have the same jurisdiction as the Boone circuit court, except that:

(1) Only the circuit court has juvenile jurisdiction; and

(2) Only the superior court No. 1 has probate jurisdiction.

[Acts 1965, ch. 240, § 6; P.L. 272, § 30; P.L.186-1986, § 6.]

33-5-9-6. [Repealed.]

Compiler's Notes. This section, concerning the transfer of proceedings to Boone Superior Court, was repealed by Acts 1981, P.L.

272, § 146. For law on transfers from circuit courts to superior courts, see IC 33-5-4-2.

33-5-9-7. Restriction on transfer of causes. — Notwithstanding any statute applying generally to superior or circuit courts, no action, cause, case, proceeding, or matter filed in the Boone circuit court or one (1) of the courts established by this chapter shall be transferred by the court to one (1) of the other courts except on written stipulation of all the parties to the cause, other than parties defaulted, which stipulation shall be filed in such cause. [Acts 1965, ch. 240, § 8; 1981, P.L. 272, § 31; P.L.186-1986, § 7.]

33-5-9-8. Transfer of causes pending in wrong court — Change of venue of transferred causes — Transcript. — (a) Whenever it shall

appear that either superior court has no jurisdiction of any action or proceeding filed therein, or it shall appear that the Boone circuit court has no jurisdiction of any action or proceeding filed therein, but that because of this chapter the jurisdiction is in one (1) of the other courts, such action or proceeding shall not abate, but such court in which the same was filed shall, without further proceedings, certify the cause and the papers therein to the proper court where the same shall stand for further proceedings and trial, as if originally filed therein, and the costs therein shall abide the result of the cause or proceedings as if it had been commenced in the court to which transferred. Such transfer shall be made by order entered on the order book of the court transferring such action or proceeding and shall be docketed in the court to which transferred without a transcript.

(b) If any action, cause, case, proceeding, or matter transferred under this section shall be taken on change of venue to the court of another county, or if such cause be appealed to the court of appeals or supreme court of Indiana from any order, ruling, judgment, or decree therein made, then the clerk on request or praecipe of the party taking such change of venue or appeal shall make a transcript of the proceedings in each court, certify to the same, and such transcript shall have the same force and effect and give to the court to which it is taken on change of venue or appeal the same jurisdiction as though such transcript originally had been made when such actions, causes, cases, proceedings, and matters were transferred from one court to the other. [Acts 1965, ch. 240, § 9; 1981, P.L. 272, § 32; P.L.186-1986, § 8.]

33-5-9-9. Change of venue — Filing causes received on change of venue. — (a) Change of venue from the judge or from the county may be had under the same terms, conditions, and procedure applicable to changes of venue from the judge or the county in circuit courts.

(b) If a cause be received by the clerk of the Boone circuit court on change of venue from another county, the same may be docketed in the Boone circuit court or either Boone superior court unless otherwise provided in the order or entry made in such cause in the county from which such change of venue was taken, in which case it shall be docketed as provided in such entry or order. [Acts 1965, ch. 240, § 10; 1978, P.L. 140, § 1; P.L.186-1986, § 9.]

Cross References. Change from county, venue, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-5-9-10. Courts of record and general jurisdiction. — The superior courts are courts of record and of general jurisdiction at law and equity, and their judgments, decrees, orders, and proceedings shall have the same force and effect as to causes, proceedings, and matters within the courts' respective jurisdictions as those of the circuit court and shall be enforced in the same manner. [Acts 1965, ch. 240, § 11; P.L.186-1986, § 10.]

33-5-9-11. Same powers as circuit courts — Rules and regulations — Incidental powers of judge. — (a) The judges of the courts have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writs of habeas corpus and of mandate and prohibition, to appoint

receivers, master commissioners, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers and employees necessary to facilitate and transact the business of the courts, as is conferred on circuit courts or the judges thereof.

(b) The judges of the Boone superior courts have full power to adopt rules for continuing business of the Boone superior courts not repugnant to the laws of the state of Indiana or the rules of the supreme court of the state of Indiana. The judges have all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt, and the power to enforce orders. The judges of the courts have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of the court, and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1965, ch. 240, § 12; P.L.186-1986, § 11.]

33-5-9-12. Process — Authority of courts and judges. — (a) The courts have the power to issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals which shall be necessary in exercising the jurisdiction hereby conferred and for the regular execution of this law, and to make all proper judgments, sentences, decrees, orders, and injunctions, and to issue all process and executions, and to do all such other acts as may be necessary to carry into effect the same in conformity with the laws of this state.

(b) The process of each court shall have the seal affixed, be attested, directed, served, returned, and be in form as is provided for process issuing from the circuit court. [Acts 1965, ch. 240, § 13; P.L.186-1986, § 12.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3 — 4.17.

33-5-9-13. Applicability of Supreme Court rules. — All laws and rules of the supreme court of Indiana governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, and adjournments by the court and by the clerk in the absence of the judge shall be applicable to superior courts, unless especially limited herein. [Acts 1965, ch. 240, § 14; P.L.186-1986, § 13.]

33-5-9-14. Jury commissioners — Summoning jury. — The superior courts shall, during the last sixty (60) days in each calendar year, each appoint for the next calendar year two (2) persons who are residents of Boone County as jury commissioners, and the law with reference to jury commissioners appointed by the circuit court shall fully govern the jury commissioners as appointed by the superior courts in all things, conditions, and qualifications. The jury commissioners shall prepare and draw the petit jury for the superior courts as the law directs the same to be done by the jury

commissioners for the circuit court. The superior courts shall be governed by the law for petit jurors in the circuit court in the making of appointments of the jury commissioners, and the clerk in issuing process for the jury, and the sheriff in serving the same. Each superior court may order on what day jurors shall be summoned to attend the court, and the judge of that court may order the selection and summoning of other jurors for the court whenever the same may be necessary. If at any time a jury shall for any reason be not drawn, then the clerk of the court shall select from among the properly qualified residents of the county a jury for the term, who shall be summoned and considered in all things as the regular panel of that court. [Acts 1965, ch. 240, § 15; P.L.186-1986, § 14.]

Cross References. Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5.

33-5-9-15. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-9-16. Records and stationery. — The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for each court. All books, papers, and records as may be necessary for each court and all books, papers, and proceedings of each court shall be kept distinct and separate from those of other courts. [Acts 1965, ch. 240, § 17; P.L.186-1986, § 15.]

33-5-9-17. No authority to impanel grand jury. — The judges of the superior courts shall not have jurisdiction or authority to make an order requiring the clerk to issue a venire for a grand jury or to impanel a grand jury, but the grand jury impanelled by the judge of the Boone circuit court shall also act as the grand jury for the superior courts, and such grand jury may return an indictment into the Boone circuit court or into a superior court as indictments are returned to the circuit court. [Acts 1965, ch. 240, § 18; 1981, P.L. 272, § 33; P.L.186-1986, § 16.]

33-5-9-18. Authority of circuit and superior court judges to sit in either court. — The judge of the Boone circuit court may, with the consent of the judge of a superior court, sit as a judge of the superior court in any matter as if the judge of the circuit court was an elected judge of the superior court. The judge of a superior court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the superior court was an elected judge of the circuit court. [P.L.186-1986, § 17.]

33-5-9-19. Standard small claims and misdemeanor division. — The Boone superior court No. 2 has a standard small claims and misdemeanor division. [P.L.186-1986, § 18.]

CHAPTER 9.5

CARROLL SUPERIOR COURT

SECTION.

33-5-9.5-1. Court created — Seal — Jurisdiction.

33-5-9.5-2. Judge — Election — Term — Eligibility.

33-5-9.5-3. Concurrent jurisdiction with circuit court.

33-5-9.5-4. Power of judge concurrent with circuit court power.

33-5-9.5-5. Bailiff and court reporter — Salaries.

33-5-9.5-6. Books.

SECTION.

33-5-9.5-7. Sessions — Rooms and facilities — Funds for maintenance.

33-5-9.5-8. Jury commissioners.

33-5-9.5-9. Transfer of actions or proceedings.

33-5-9.5-10. Authority of circuit and superior court judges to sit in either court.

33-5-9.5-11. Standard small claims and misdemeanor division.

33-5-9.5-1. Court created — Seal — Jurisdiction. — There is established a court of record to be known as the Carroll superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Carroll Superior Court, Carroll County, Indiana.” Carroll County comprises the judicial district of the court. [P.L.176-1988, § 1.]

33-5-9.5-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Carroll County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Carroll County;

(2) Be less than seventy (70) years of age at the time of taking office; and

(3) Be admitted to the practice of law in Indiana.

[P.L.176-1988, § 1.]

33-5-9.5-3. Concurrent jurisdiction with circuit court. — The court has the same jurisdiction as the Carroll circuit court. [P.L.176-1988, § 1.]

33-5-9.5-4. Power of judge concurrent with circuit court power. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Carroll circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.176-1988, § 1; P.L.1-1990, § 319.]

33-5-9.5-5. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Carroll circuit court. Their salaries shall be paid monthly out of the treasury of Carroll County as provided by law. [P.L.176-1988, § 1.]

33-5-9.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution

dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.176-1988, § 1.]

33-5-9.5-7. Sessions — Rooms and facilities — Funds for maintenance. — The court shall hold its sessions in the Carroll County courthouse in Delphi, Indiana, or in such other places in the county as the Carroll County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Carroll County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.176-1988, § 1.]

33-5-9.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the Carroll circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Carroll circuit court. The grand jury selected for the Carroll circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.176-1988, § 1.]

33-5-9.5-9. Transfer of actions or proceedings. — The judge of the Carroll circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.176-1988, § 1.]

33-5-9.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Carroll circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.176-1988, § 1.]

33-5-9.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.176-1988, § 1.]

CHAPTER 9.7

CASS SUPERIOR COURT

SECTION.	SECTION.
33-5-9.7-1. Creation — Seal.	execution dockets and fee books.
33-5-9.7-2. Number of judges — Election — Term.	33-5-9.7-11. Location of sessions — Rooms and facilities provided.
33-5-9.7-3. Jurisdiction.	33-5-9.7-12. Jury commissioners — Selection of jury — Grand jury.
33-5-9.7-4. Powers of judge.	33-5-9.7-13. [Repealed.]
33-5-9.7-5 — 33-5-9.7-7. [Repealed.]	33-5-9.7-14. Transfer of actions.
33-5-9.7-8. Clerk of the court — Sheriff of the court.	33-5-9.7-15. Circuit court judge sitting as judge of court — Judge of
33-5-9.7-9. Bailiff — Official court reporter.	
33-5-9.7-10. Order books, judgment dockets,	

SECTION.

court sitting as circuit court judge.

SECTION.

33-5-9.7-16. Standard small claims and misdemeanor division.

33-5-9.7-1. Creation — Seal. — There is established a court of record to be known as the Cass Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Cass Superior Court, Cass County, Indiana.” Cass County comprises the judicial district of the court. [IC 33-5-9.7-1, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-2. Number of judges — Election — Term. — The court has one (1) judge, who shall be elected at the general election every six (6) years in Cass County. His term begins January 1 following his election and ends December 31 following the election of his successor. [IC 33-5-9.7-2, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-3. Jurisdiction. — The court has the same jurisdiction as the Cass Circuit Court, except that only the circuit court has juvenile jurisdiction. [IC 33-5-9.7-3, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Cass Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-9.7-4, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-5 — 33-5-9.7-7. [Repealed.]

Compiler’s Notes. These sections, concerning the judge’s salary; the small claims and misdemeanor division and traffic viola-

tions bureau; and the taxation and disbursement of costs, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-9.7-8. Clerk of the court — Sheriff of the court. — The clerk of the Cass Circuit Court shall serve as the clerk of the court, and the sheriff of Cass County shall serve as the sheriff of the court. They shall attend the court and perform the same duties relating to their offices as they are required to do with respect to the Cass Circuit Court. [IC 33-5-9.7-8, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-9. Bailiff — Official court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Cass Circuit Court. Their salaries shall be paid monthly out of the treasury of Cass County as provided by law. [IC 33-5-9.7-9, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-10. Order books, judgment dockets, execution dockets and fee books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from

the books and papers of other courts. [IC 33-5-9.7-10, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-11. Location of sessions — Rooms and facilities provided.

— The court shall hold its sessions in the Cass County courthouse in Logansport, Indiana, or in such other places in the county as the board of county commissioners of Cass County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Cass County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-9.7-11, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-12. Jury commissioners — Selection of jury — Grand jury.

— The jury commissioners appointed by the judge of the Cass Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Cass Circuit Court. The grand jury selected for the Cass Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-9.7-12, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-13. [Repealed.]

Compiler's Notes. This section, concerning juror and witness fees, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-9.7-14. Transfer of actions. — The judge of the Cass Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-9.7-14, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-15. Circuit court judge sitting as judge of court — Judge of court sitting as circuit court judge. — The judge of the Cass Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-9.7-15, as added by Acts 1977, P.L. 315, § 1.]

33-5-9.7-16. Standard small claims and misdemeanor division. — The Cass Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 45.]

CHAPTER 10

CLARK SUPERIOR COURTS

SECTION.

33-5-10-1. [Repealed.]

33-5-10-1.5. Clark superior courts — Establishment — Judge — Election — Term — Eligibility.

33-5-10-2. [Repealed.]

33-5-10-2.5. Names of courts — Jurisdiction and powers — Seal.

33-5-10-3. [Repealed.]

33-5-10-5. Authority of court.

33-5-10-6. Orders — Writs — Appointment of receivers and master commissioners — Other officers.

33-5-10-7. Where court held — Provision by county commissioners.

33-5-10-8. Election of judge — Term — Filling vacancy.

33-5-10-9. Salary of judge.

SECTION.

33-5-10-10 — 33-5-10-12. [Repealed.]

33-5-10-13. Clerk — Court records.

33-5-10-14. Appointment of bailiff — Salary.

33-5-10-15. Reporter — Duties — Salary — Term.

33-5-10-16. Laws governing court.

33-5-10-17. [Repealed.]

33-5-10-18. Appeals.

33-5-10-19. [Repealed.]

33-5-10-20. Seal affixed to process.

33-5-10-21. Change of venue — Hearing — Determination — Transfer of cause.

33-5-10-22. Selection of petit jury.

33-5-10-24. Transfer of actions — Reciprocal right of judges to sit on other court.

33-5-10-1. [Repealed.]

Compiler's Notes. This section, concerning the creation of the Clark County Superior

Court, was repealed by Acts 1981, P.L. 275, § 28(b). For present law, see IC 33-5-10-1.5.

33-5-10-1.5. Clark superior courts — Establishment — Judge — Election — Term — Eligibility. — (a) There are established three (3) superior courts in and for the county of Clark, Indiana, each of which shall consist of one (1) judge, who shall hold the judge's office for a term of six (6) years, beginning on the first day of January after the judge's election, and until the judge's successor is elected and qualified.

(b) To be eligible to hold office as a judge of Clark superior court, a person must be:

(1) A resident of Clark County; and

(2) Admitted to the bar of Indiana.

[IC 33-5-10-1.5, as added by Acts 1981, P.L. 275, § 1; P.L.133-1992, § 3; P.L.18-1995, § 24.]

33-5-10-2. [Repealed.]

Compiler's Notes. This section, concerning the seal of Clark County Superior Court,

was repealed by Acts 1981, P.L. 275, § 28(b). For present law, see IC 33-5-10-2.5(c).

33-5-10-2.5. Names of courts — Jurisdiction and powers — Seal. — (a) The superior courts shall be known as Clark superior court No. 1, Clark superior court No. 2, and Clark superior court No. 3, and the county of Clark shall constitute the judicial district of each court.

(b) Each court shall be a court of record having the same jurisdiction as the circuit court. A judge of the superior court has the same powers relating to the conduct of business of the court as the judge of the circuit court.

(c) Each court shall have a seal containing the words "Clark Superior Court _____ (insert "No. 1", "No. 2", or "No. 3") of Clark County, Indiana".

(d) Clark superior court No. 3 has a standard small claims and misdemeanor docket. [IC 33-5-10-2.5, as added by Acts 1981, P.L. 275, § 2; P.L.18-1995, § 25.]

Cited: Smith v. Smith, 594 N.E.2d 825 (Ind. App. 1992).

33-5-10-3. [Repealed.]

Compiler's Notes. These sections, concerning jurisdiction and court of record and enforcement of orders, were repealed by Acts 1981, P.L. 275, § 28. For present law, see IC 33-5-10-2.5.

33-5-10-5. Authority of court. — Each judge of a superior court shall have full power and authority to make and adopt rules and regulations for conducting the business of his court, not repugnant to the laws of this state. [Acts 1967, ch. 43, § 5; 1981, P.L. 275, § 3.]

33-5-10-6. Orders — Writs — Appointment of receivers and master commissioners — Other officers. — Each judge of a superior court shall have the same power to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus and of mandate and prohibition, to appoint receivers, master commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitaté and transact the business of the court as is conferred on circuit courts or the judges thereof. [Acts 1967, ch. 43, § 6; 1981, P.L. 275, § 4.]

33-5-10-7. Where court held — Provision by county commissioners. — Each superior court of Clark County shall hold its sessions at the courthouse of the county, or at such other convenient place as the court shall designate in such county, and the county commissioners shall provide suitable quarters for each court. [Acts 1967, ch. 43, § 8; 1981, P.L. 275, § 5.]

33-5-10-8. Election of judge — Term — Filling vacancy. — There shall be one (1) judge for each of the courts, who shall be elected by the legal voters of Clark County every six (6) years at the general election. His term of office begins on the first day of January and continues for six (6) years and until his successor is elected and qualified. The judge of each superior court shall be commissioned by the governor in the same manner as judges of the circuit court. All vacancies occurring in the office of judge of the superior court shall be filled by appointments by the governor in the same manner as vacancies in the office of judge of the circuit court. [Acts 1967, ch. 43, § 9; 1976, P.L. 133, § 3; 1981, P.L. 275, § 6.]

33-5-10-9. Salary of judge. — The judge of each superior court of Clark County shall receive the same salary as is now paid the judge of the circuit

court of the county, which salary shall be paid at the time and in the same manner as the judge of the Clark circuit court is paid. [Acts 1967, ch. 43, § 10; 1981, P.L. 275, § 7.]

33-5-10-10 — 33-5-10-12. [Repealed.]

Compiler's Notes. These sections, concerning additional compensation, duties of clerk and sheriff and the taxing of fees collected, were repealed by P.L.171-1984, § 80.

33-5-10-13. Clerk — Court records. — The clerk, under the direction of a judge of the superior court, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for that court, and all books, papers and proceedings of that court shall be kept distinct and separate from those of other courts, and the records of all civil cases separate and apart from the records of juvenile matters. [Acts 1967, ch. 43, § 14; 1981, P.L. 275, § 11.]

33-5-10-14. Appointment of bailiff — Salary. — Each judge of a superior court shall appoint a bailiff for his court, whose salary shall be fixed and paid as now provided by law. [Acts 1967, ch. 43, § 15; 1981, P.L. 275, § 12.]

33-5-10-15. Reporter — Duties — Salary — Term. — Each judge of a superior court shall appoint a court reporter, whose duties, salary and term, shall be regulated in the same manner as the court reporter of circuit courts. [Acts 1967, ch. 43, § 16; 1981, P.L. 275, § 13.]

33-5-10-16. Laws governing court. — All laws governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the courts established under this chapter. However, a superior court is not authorized to appoint jury commissioners or to call the grand jury. [Acts 1967, ch. 43, § 17; 1981, P.L. 275, § 14.]

33-5-10-17. [Repealed.]

Compiler's Notes. This section, concerning fees paid jurors and witnesses, was repealed by P.L.171-1984, § 80. For present provisions, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-10-18. Appeals. — Any party may appeal to the supreme court or court of appeals from any order or judgment of a superior court in any case where, by the laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law governing appeals from the circuit court to the Court of Appeals and Supreme Court. [Acts 1967, ch. 43, § 19; 1981, P.L. 275, § 16.]

33-5-10-19. [Repealed.]

Compiler's Notes. This section (Acts 1967, ch. 43, § 20), concerning transfer of cases to Clark superior court, was repealed by Acts 1981, P.L. 272, § 146 and Acts 1981, P.L. 275, § 28(b). For present law, see IC 33-5-10-24(a).

33-5-10-20. Seal affixed to process. — The process of each superior court shall have the seal affixed and be attested, directed, served and returned, and be in form as is provided for process issuing from the circuit court. [Acts 1967, ch. 43, § 23; 1981, P.L. 275, § 17.]

33-5-10-21. Change of venue — Hearing — Determination — Transfer of cause. — Whenever an affidavit for a change of venue is filed in a superior court, for any of the causes embraced in IC 34-35-1-1(1), IC 34-35-1-1(2), IC 34-35-1-1(6), or IC 34-35-1-1(7), some judge of a circuit court or superior court or a competent attorney-at-law, shall be called to hear and determine the same as provided by law for changes of venue in causes pending in the circuit court, or said cause may be certified to the Clark circuit court or a Clark superior court, in the discretion of such judge of the superior court, and the original papers shall be transferred to the court, and no transcript shall be necessary, and the circuit court shall have jurisdiction to hear and determine the cause and render judgment therein; and if the cause alleged in the affidavit is embraced in IC 34-35-1-1(3), IC 34-35-1-1(4), and IC 34-35-1-1(5), then the change shall be granted, and the cause directed to the circuit or superior court of some other county, as provided in cases of changes of venue from the circuit court, and the court to which the case is sent shall have jurisdiction to hear and determine the cause and render judgment therein. [Acts 1967, ch. 43, § 24; 1981, P.L. 275, § 18; P.L.1-1998, § 176.]

33-5-10-22. Selection of petit jury. — On the third Monday of each January, the clerk of each superior court and jury commissioners appointed by the judge of the circuit court of the county as provided by law, shall proceed to select a petit jury, in manner as is provided by law, to serve each superior court for that calendar year, and the officers in selecting, and the clerk, in issuing process for, the jury, and the sheriff in serving the same, shall in all things be governed by the rules and regulations prescribed for the selection of petit jurors in the circuit court. However, a superior court may order on what day the jurors shall be summoned to attend his court. The judge of a superior court may order the selecting and summoning of other jurors for the court whenever the same may be necessary. [Acts 1967, ch. 43, § 25; 1981, P.L. 275, § 19.]

Cross References. Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5.

33-5-10-24. Transfer of actions — Reciprocal right of judges to sit on other court. — (a) The judge of the Clark Circuit Court may, with the consent of a judge of the superior court, transfer any action or proceeding

from the circuit court to that superior court. The judge of a superior court may, with the consent of the judge of the circuit court, transfer any action or proceeding from that superior court to the circuit court. The judge of a superior court may, with the consent of the judge of the other superior court, transfer any action or proceeding from that superior court to the other superior court.

(b) The judge of the Clark Circuit Court may, with the consent of the judge of the superior court, sit as a judge of that superior court in any matter, as if he were an elected judge of that superior court. The judge of a superior court may, with consent of the judge of the circuit court, sit as a judge of the circuit court as if he were an elected judge of the circuit court. The judge of a superior court may, with the consent of the judge of the other superior court, sit as judge of the other superior court as if he were the elected judge of that superior court. [IC 33-5-10-24, as added by Acts 1981, P.L. 275, § 20.]

Compiler's Notes. No section designated as IC 33-5-10-23 has been enacted.

CHAPTER 10.3

CLINTON SUPERIOR COURT

SECTION.

- 33-5-10.3-1. Court established — Seal.
- 33-5-10.3-2. Election and term of judge.
- 33-5-10.3-3. Jurisdiction.
- 33-5-10.3-4. Powers of judge.
- 33-5-10.3-5. Bailiff and court reporter.
- 33-5-10.3-6. Books.
- 33-5-10.3-7. Sessions — Rooms and facilities.
- 33-5-10.3-8. Jury commissioners — Selection of juries — Grand jury.

SECTION.

- 33-5-10.3-9. Transfer of actions or proceedings.
- 33-5-10.3-10. Authority of circuit and superior court judges to sit in either court.
- 33-5-10.3-11. Standard small claims and misdemeanor division.

33-5-10.3-1. Court established — Seal. — There is established a court of record to be known as the Clinton superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Clinton Superior Court, Clinton County, Indiana.” Clinton County comprises the judicial district of the court. [P.L.40-1990, § 15.]

33-5-10.3-2. Election and term of judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Clinton County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Clinton County;
- (2) Be less than seventy (70) years of age at the time of taking office;
- and
- (3) Be admitted to the practice of law in Indiana.

[P.L.40-1990, § 15.]

33-5-10.3-3. Jurisdiction. — The court has the same jurisdiction as the Clinton circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.40-1990, § 15.]

33-5-10.3-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Clinton circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgements of deeds. [P.L.40-1990, § 15.]

33-5-10.3-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Clinton circuit court. Their salaries shall be paid monthly out of the treasury of Clinton County as provided by law. [P.L.40-1990, § 15.]

33-5-10.3-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.40-1990, § 15.]

33-5-10.3-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Clinton County courthouse in Frankfort, Indiana, or in such other places in the county as the Clinton County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Clinton County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.40-1990, § 15.]

33-5-10.3-8. Jury commissioners — Selection of juries — Grand jury. — The jury commissioners appointed by the judge of the Clinton circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Clinton circuit court. The grand jury selected for the Clinton circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.40-1990, § 15.]

33-5-10.3-9. Transfer of actions or proceedings. — The judge of the Clinton circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.40-1990, § 15.]

33-5-10.3-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Clinton circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with the consent

of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.40-1990, § 15.]

33-5-10.3-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.40-1990, § 15.]

CHAPTER 10.5

CLAY SUPERIOR COURT

SECTION.

- 33-5-10.5-1. Clay Superior Court — Establishment — Seal.
- 33-5-10.5-2. Judge — Election — Term.
- 33-5-10.5-3. Jurisdiction.
- 33-5-10.5-4. Judge — Powers.
- 33-5-10.5-5 — 33-5-10.5-8. [Repealed.]
- 33-5-10.5-9. Appointment of bailiff and official court reporter — Appointment of probation officer — Salaries.
- 33-5-10.5-10. Court books.

SECTION.

- 33-5-10.5-11. Locations for court sessions.
- 33-5-10.5-12. Jury commissioners — Grand jury.
- 33-5-10.5-13. [Repealed.]
- 33-5-10.5-14. Transfer of actions.
- 33-5-10.5-15. Reciprocal right of judges to sit on other court.
- 33-5-10.5-16. Establishment of local rules.
- 33-5-10.5-17. Standard small claims and misdemeanor division.

33-5-10.5-1. Clay Superior Court — Establishment — Seal. — There is established a court of record to be known as the Clay Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Clay Superior Court, Clay County, Indiana.” Clay County comprises the judicial district of the court. [IC 33-5-10.5-1, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-2. Judge — Election — Term. — The court has one (1) judge, who shall be elected at the general election every six (6) years in Clay County. His term begins January 1 following his election and ends December 31 following the election of his successor. [IC 33-5-10.5-2, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-3. Jurisdiction. — The court has the same jurisdiction as the Clay Circuit Court, except that only the circuit court has juvenile and probate jurisdiction. [IC 33-5-10.5-3, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-4. Judge — Powers. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Clay Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-10.5-4, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-5 — 33-5-10.5-8. [Repealed.]

Compiler’s Notes. These sections, concerning salary paid to judge, small claims docket, taxation and disbursement of costs,

and service and duties of clerk and sheriff of court, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-10.5-9. Appointment of bailiff and official court reporter — Appointment of probation officer — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court and the court may appoint a probation officer; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Clay Circuit Court. Their salaries shall be paid semimonthly out of the treasury of Clay County as provided by law. [IC 33-5-10.5-9, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-10. Court books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-10.5-10, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-11. Locations for court sessions. — The court shall hold its sessions in the Clay County courthouse in Brazil, Indiana, or in such other places in the county as the board of county commissioners of Clay County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Clay County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities necessary for the efficient operation of the court. [IC 33-5-10.5-11, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-12. Jury commissioners — Grand jury. — The jury commissioners appointed by the judge of the Clay Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Clay circuit court. The grand jury selected for the Clay Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-10.5-12, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-13. [Repealed.]

Compiler's Notes. This section, concerning fees paid jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-10.5-14. Transfer of actions. — The judge of the Clay Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-10.5-14, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-15. Reciprocal right of judges to sit on other court. — The judge of the Clay Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an

elected judge of the circuit court. [IC 33-5-10.5-15, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-16. Establishment of local rules. — The judges of the superior and circuit courts of Clay County may jointly, in accordance with the Indiana Rules of Trial Procedure, establish local rules for governing their courts, including rules for distribution of cases over which the judges have concurrent jurisdiction. [IC 33-5-10.5-16, as added by Acts 1981, P.L. 276, § 1.]

33-5-10.5-17. Standard small claims and misdemeanor division. — The Clay Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 46.]

CHAPTER 10.6

DAVIESS SUPERIOR COURT

SECTION.

- 33-5-10.6-1. Court created — Seal.
- 33-5-10.6-2. Judges.
- 33-5-10.6-3. Jurisdiction.
- 33-5-10.6-4. Powers of judge.
- 33-5-10.6-5. Bailiff and court reporter.
- 33-5-10.6-6. Books.
- 33-5-10.6-7. Sessions — Rooms and facilities.
- 33-5-10.6-8. Jury commissioners.

SECTION.

- 33-5-10.6-9. Transfer of actions or proceedings.
- 33-5-10.6-10. Authority of circuit and superior court judges to sit in either court.
- 33-5-10.6-11. Standard small claims and misdemeanor division.

33-5-10.6-1. Court created — Seal. — There is established a court of record to be known as the Daviess superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Daviess Superior Court, Daviess County, Indiana”. Daviess County comprises the judicial district of the court. [P.L.392-1987(ss), § 3.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-10.6-2. Judges. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Daviess County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Daviess County;
- (2) Be less than seventy (70) years of age at the time of taking office;
and
- (3) Be admitted to the bar of Indiana.

[P.L.392-1987(ss), § 3.]

33-5-10.6-3. Jurisdiction. — The court has the same jurisdiction as the Daviess circuit court. [P.L.392-1987(ss), § 3.]

33-5-10.6-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Daviess circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.392-1987(ss), § 3.]

33-5-10.6-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Daviess circuit court. Their salaries shall be paid monthly out of the treasury of Daviess County as provided by law. [P.L.392-1987(ss), § 3.]

33-5-10.6-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.392-1987(ss), § 3.]

33-5-10.6-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Daviess County courthouse in Washington, Indiana, or in such other places in the county as the Daviess county executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Daviess County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.392-1987(ss), § 3.]

33-5-10.6-8. Jury commissioners. — The jury commissioners appointed by the judge of the Daviess circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Daviess circuit court. The grand jury selected for the Daviess circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.392-1987(ss), § 3.]

33-5-10.6-9. Transfer of actions or proceedings. — The judge of the Daviess circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.392-1987(ss), § 3.]

33-5-10.6-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Daviess circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if the judge of the circuit court was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the court was an elected judge of the circuit court. [P.L.392-1987(ss), § 3.]

33-5-10.6-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.392-1987(ss), § 3.]

CHAPTER 10.7

DECATUR SUPERIOR COURT

SECTION.

- 33-5-10.7-1. Establishment of court — Seal.
- 33-5-10.7-2. Judge — Election, term, and qualifications.
- 33-5-10.7-3. Jurisdiction.
- 33-5-10.7-4. Powers of judge.
- 33-5-10.7-5. Bailiff — Official court reporter.
- 33-5-10.7-6. Record books.
- 33-5-10.7-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-10.7-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-10.7-9. Transfer of actions.
- 33-5-10.7-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-10.7-11. Standard small claims and misdemeanor division.

33-5-10.7-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Decatur superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Decatur Superior Court, Decatur County, Indiana.”

(c) Decatur County comprises the judicial district of the court. [P.L.133-1992, § 4.]

33-5-10.7-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Decatur County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as a judge of the court, a person must be:

- (1) A resident of Decatur County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 4.]

33-5-10.7-3. Jurisdiction. — The court has the same jurisdiction as the Decatur circuit court. [P.L.133-1992, § 4.]

33-5-10.7-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Decatur circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 4.]

33-5-10.7-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Decatur circuit court; and

(2) Paid monthly out of the treasury of Decatur County as provided by law. [P.L.133-1992, § 4.]

33-5-10.7-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 4.]

33-5-10.7-7. Location of sessions — Rooms and facilities provided.

— (a) The court shall hold sessions in:

- (1) The Decatur County courthouse in Greensburg, Indiana; or
- (2) Other places in the county that the Decatur County executive provides.

(b) The Decatur County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Decatur County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 4.]

33-5-10.7-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Decatur circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Decatur circuit court.

(c) The grand jury selected for the Decatur circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 4.]

33-5-10.7-9. Transfer of actions. — (a) The judge of the Decatur circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the Decatur circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.133-1992, § 4.]

33-5-10.7-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the Decatur circuit court may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Decatur circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.133-1992, § 4.]

33-5-10.7-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 4.]

CHAPTER 10.8

DEKALB SUPERIOR COURT

SECTION.

33-5-10.8-1. Establishment of court — Seal.
 33-5-10.8-2. Number of judges — Election — Eligibility to hold office.
 33-5-10.8-3. Jurisdiction.
 33-5-10.8-4. Powers of judge.
 33-5-10.8-5 — 33-5-10.8-8. [Repealed.]
 33-5-10.8-9. Bailiff — Official court reporter.
 33-5-10.8-10. Record books.
 33-5-10.8-11. Location of sessions — Rooms and facilities provided.
 33-5-10.8-12. Jury commissioners — Selection of juries — Grand jury.

SECTION.

33-5-10.8-13. [Repealed.]
 33-5-10.8-14. Transfer of actions.
 33-5-10.8-15. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
 33-5-10.8-16. [Repealed.]
 33-5-10.8-17. Standard small claims and misdemeanor division — Small claims referee.
 33-5-10.8-18. Filing of transferred action.
 33-5-10.8-19. [Repealed.]

33-5-10.8-1. Establishment of court — Seal. — There is established a court of record to be known as the DeKalb Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “DeKalb Superior Court, DeKalb County, Indiana.” DeKalb County comprises the judicial district of the court. [IC 33-5-10.8-1, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-2. Number of judges — Election — Eligibility to hold office. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in DeKalb County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of DeKalb County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana.

[IC 33-5-10.8-2, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-3. Jurisdiction. — The court has the same jurisdiction as the DeKalb circuit court. [IC 33-5-10.8-3, as added by Acts 1977, P.L. 316, § 1; P.L.186-1986, § 10.]

33-5-10.8-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the DeKalb Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-10.8-4, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-5 — 33-5-10.8-8. [Repealed.]

Compiler's Notes. These sections, concerning salary paid to judge, dockets, costs and jury trials in small claims and misdemeanor division, provision for a traffic viola-

tions bureau, general costs, and sheriff of court, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-10.8-9. Bailiff — Official court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the DeKalb Circuit Court. Their salaries shall be paid monthly out of the treasury of DeKalb County as provided by law. [IC 33-5-10.8-9, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-10. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-10.8-10, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-11. Location of sessions — Rooms and facilities provided. — The court shall hold its sessions in the DeKalb County courthouse in Auburn, Indiana, or in such other places in the county as the board of county commissioners of DeKalb County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of DeKalb County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-10.8-11, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-12. Jury commissioners — Selection of juries — Grand jury. — The jury commissioners appointed by the judge of the DeKalb Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the DeKalb Circuit Court. The grand jury selected for the DeKalb Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-10.8-12, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-13. [Repealed.]

Compiler's Notes. This section, concerning fees paid jurors and witnesses, was re-

pealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-10.8-14. Transfer of actions. — The judge of the DeKalb Circuit Court may, with the consent of the judge of the court and of the parties or their counsel, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court and of the parties or their counsel, transfer any action or proceeding from the court to the circuit court. [IC 33-5-10.8-14, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-15. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — The judge of the DeKalb Circuit Court may, with the consent of the judge of the court and of the parties or their counsel, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court and of the parties or their counsel, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-10.8-15, as added by Acts 1977, P.L. 316, § 1.]

33-5-10.8-16. [Repealed.]

Compiler's Notes. A section bearing this number, relating to the standard small claims and misdemeanor division, was added by P.L.167-1984, § 47. Another section bearing this number, relating to the filing of transferred actions, was added by P.L.292-1985, § 8.

The section added by P.L.167-1984, § 47, was repealed by P.L.19-1986, § 52. For present provisions, see IC 33-5-10.8-17.

The section added by P.L.292-1985, § 8, was repealed by P.L.19-1986, § 52 and by P.L.188-1986, § 22. For present provisions, see IC 33-5-10.8-18.

33-5-10.8-17. Standard small claims and misdemeanor division — Small claims referee. — (a) The court has a standard small claims and misdemeanor division.

(b) If the county executive establishes the position of small claims referee to serve the court, the judge of the court may appoint a part-time small claims referee under IC 33-5-2.5 to assist the court in the exercise of its small claims jurisdiction.

(c) The small claims referee is entitled to reasonable compensation not exceeding twenty thousand dollars (\$20,000) a year as recommended by the judge of the court to be paid by the county after the salary is approved by the county fiscal body. The state shall pay fifty percent (50%) of the salary set under this subsection and the county shall pay the remainder of the salary.

(d) The county executive shall provide and maintain a suitable courtroom and facilities for the use of the small claims referee, including necessary furniture and equipment.

(e) The court shall employ administrative staff necessary to support the functions of the small claims referee.

(f) The county fiscal body shall appropriate sufficient funds for the provision of staff and facilities required under this section. [P.L.19-1986, § 53; P.L.334-1989(ss), § 13.]

33-5-10.8-18. Filing of transferred action. — (a) If the transcript of the original papers in a civil action or proceeding received by the clerk of the circuit and superior courts of DeKalb County on change of venue from another county contains an order of the court from which venue was changed designating the circuit court or the superior court as the court to which the case is to be transferred, the clerk shall file the action or proceeding on the docket of the designated court.

(b) If the transcript of the original papers in a civil action or proceeding contains no order designating the court to which the case is to be transferred, the clerk shall alternately file each action or proceeding on the docket

of the circuit court and the docket of the superior court, depending on the order and sequence in which the papers of the cases reach the clerk, so that if the first case is assigned to the circuit court, the next must be assigned to the superior court. [P.L.19-1986, § 54; P.L.32-1986, § 7.]

33-5-10.8-19. [Repealed.]

Compiler’s Notes. This section, enacted 1986, § 8. For present provisions, see IC 33-5-10.8-18, § 11, concerning the filing of a transferred action, was repealed by P.L.32-

CHAPTER 10.9

FULTON SUPERIOR COURT

SECTION.
33-5-10.9-1. Establishment of court — Seal.
33-5-10.9-2. Judge — Election, term, and qualifications.
33-5-10.9-3. Jurisdiction.
33-5-10.9-4. Powers of judge.
33-5-10.9-5. Bailiff — Official court reporter.
33-5-10.9-6. Record books.
33-5-10.9-7. Location of sessions — Rooms and facilities provided.

SECTION.
33-5-10.9-8. Jury commissioners — Selection of juries — Grand jury.
33-5-10.9-9. Transfer of actions.
33-5-10.9-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
33-5-10.9-11. Standard small claims and misdemeanor division.

33-5-10.9-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Fulton superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Fulton Superior Court, Fulton County, Indiana.”

(c) Fulton County comprises the judicial district of the court. [P.L.133-1992, § 5.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that this chapter take effect July 1, 1993.

33-5-10.9-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Fulton County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Fulton County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 5.]

33-5-10.9-3. Jurisdiction. — The court has the same jurisdiction as the Fulton circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.133-1992, § 5.]

33-5-10.9-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Fulton circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 5.]

33-5-10.9-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

- (b) The salaries of the bailiff and the official court reporter shall be:
 - (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Fulton circuit court; and
 - (2) Paid monthly out of the treasury of Fulton County as provided by law. [P.L.133-1992, § 5.]

33-5-10.9-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 5.]

33-5-10.9-7. Location of sessions — Rooms and facilities provided.

— (a) The court shall hold sessions in:

- (1) The Fulton County courthouse in Rochester, Indiana; or
- (2) Other places in the county as the Fulton County executive may provide.

(b) The Fulton County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Fulton County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 5.]

33-5-10.9-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Fulton circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Fulton circuit court.

(c) The grand jury selected for the Fulton circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 5.]

33-5-10.9-9. Transfer of actions. — (a) The judge of the Fulton circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.133-1992, § 5.]

33-5-10.9-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the circuit court may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.133-1992, § 5.]

33-5-10.9-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 5.]

CHAPTER 11
GRANT SUPERIOR COURT

SECTION.
33-5-11-1. Judicial districts created.
33-5-11-2 — 33-5-11-9. [Repealed.]
33-5-11-10. Grant Superior Court — Election and term of judge — Vacancies.
33-5-11-11. Jurisdiction.
33-5-11-12. Where court held.
33-5-11-13. Clerk and sheriff — Prosecuting attorney.

SECTION.
33-5-11-14. Procedure in Grant Superior Court — Changes of venue — Jury commissioners — Jurors.
33-5-11-15. Transfer of causes — Appeals — Transcripts.
33-5-11-16. Entry of judgments, executions and papers.

33-5-11-1. Judicial districts created. — The county of Grant shall be and constitute the Grant Superior Court Judicial District and the county of Delaware shall be and constitute the Delaware Superior Court Judicial District of the state of Indiana. [Acts 1929, ch. 244, § 1 (Acts 1931, p. 665).]

Cross References. Delaware Superior Courts, IC 33-5-12.1-1 — IC 33-5-12.1-16. Grant Superior Court No. 2, see IC 33-5-19-1 — IC 33-5-19-8.

33-5-11-2 — 33-5-11-9. [Repealed.]

Compiler's Notes. These sections, concerning the Delaware superior court, were repealed by P.L.292-1983, § 19. For present law concerning the Delaware superior courts, see IC 33-5-12.1.

33-5-11-10. Grant Superior Court — Election and term of judge — Vacancies. — The term of the judge of the Grant Superior Court shall be six (6) years, if the person shall so long behave himself well, beginning on the first day of January next following his election. The voters of Grant County every six (6) years at a general election shall elect a person as judge of the court. The election shall be certified in the same manner as is provided by law for the certifying of the election of circuit court judges. If for any cause a vacancy shall occur in the judgeship of the court, the governor shall

appoint and commission a person to fill such vacancy for the unexpired term. [Acts 1929, ch. 244, § 10 (Acts 1931, p. 665); 1976, P.L. 133, § 5; P.L.171-1984, § 26.]

Cross References. Beginning and expiration of term, IC 33-13-5-1.

Practice of law as qualification, IC 33-13-9-1.

33-5-11-11. Jurisdiction. — The Grant Superior Court has the same jurisdiction as the circuit court of its county. [Acts 1929, ch. 244, § 11 (Acts 1931, p. 665); 1978, P.L. 136, § 33.]

33-5-11-12. Where court held. — The Grant Superior Court shall hold its sessions in the city of Marion in the county of Grant, state of Indiana. [Acts 1929, ch. 244, § 12 (Acts 1931, p. 665); 1981, P.L. 272, § 38.]

33-5-11-13. Clerk and sheriff — Prosecuting attorney. — The clerk of the circuit court and the sheriff of said county of Grant shall be respectively the clerk and sheriff of said superior court of said county, and such clerk and sheriff shall attend said court in said county and discharge all the duties pertaining to their respective offices, as they are now or may hereafter be required to do by law in the circuit court. They shall be governed in all things by the laws now in force for their government in the circuit court. The prosecuting attorney of the forty-eighth judicial circuit shall prosecute the pleas of the state in said Grant Superior Court. [Acts 1929, ch. 244, § 13 (Acts 1931, p. 665).]

33-5-11-14. Procedure in Grant Superior Court — Changes of venue — Jury commissioners — Jurors. — (a) All laws governing pleading, practice, establishing rules, issuing and serving process, giving notice, appointment of judges pro tem and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, contempt and appeals in force in the circuit courts, shall, as far as applicable, govern proceedings in Grant Superior Court. In all cases in which appeals are authorized to be taken to and from circuit courts, appeals in cases of which said superior court has jurisdiction may be taken to and from said superior court in like manner. Changes of venue may be had from any circuit or superior court to the superior court of said county of Grant, and from the superior court of said county of Grant, to any circuit or superior court having jurisdiction of the subject matter of the cause of action, in the same manner that changes of venue are provided for, from, and to the circuit courts of the state. However, if a change of venue is had from the judge of either the circuit or superior court of said Grant County in any cause of which said circuit and superior courts have concurrent jurisdiction, such cause may be sent to the circuit or superior court of said county, as the case may be, and the original papers in such causes shall be transferred from one court to the other, no transcript being necessary. The court to which said cause is so transferred shall have jurisdiction to hear and determine the same and render judgment thereon.

(b) The superior court shall, during each calendar year, appoint two (2) persons of Grant County as jury commissioners, and the law made with reference to jury commissioners appointed by the circuit court shall fully govern the said jury commissioners as appointed by said superior court in all things, conditions, and qualifications. The jury commissioners shall prepare and draw the jury for said superior court as the law directs the same to be done by the jury commissioners for the circuit court, and the said superior court shall be governed by said law in making said appointments of said jury commissioners. The clerk of Grant County in issuing process for said jury, and the sheriff of said county in serving the same, shall in all things be governed by the law made for petit jurors in the circuit court. However, the superior court may order on what day said jurors shall be summoned to attend said court, and the judge of said court may order the selection and summoning of other jurors for said court whenever the same may be necessary. If, at any time, a jury shall be not drawn, then the clerk of said court shall select from among the properly qualified residents of such county, jurors for such term, who shall be summoned and considered in all things as the regular panel of said court. [Acts 1929, ch. 244, § 14 (Acts 1931, p. 665); 1981, P.L. 272, § 39; P.L.171-1984, § 27.]

Cross References. Change from county, venue, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

Circuit courts, transfer of cases from superior court, IC 33-5-4-1.

Jury fee, per diem and mileage, IC 33-19-1-4.

Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

33-5-11-15. Transfer of causes — Appeals — Transcripts. — Whenever any cause is transferred from the Grant circuit court to the Grant superior court or from the Grant superior court to the Grant circuit court without a transcript having been made, and if such case shall be taken on a change of venue to a court of another county, or if any such cases shall be appealed to the court of appeals or to the supreme court, then the parties procuring the change of venue or the appeal may have a transcript made of the proceedings in each of the courts and certified by the clerk of the courts, respectively, and these transcripts have the same force and effect and give to the court to which it is taken on change of venue or on appeal the same jurisdiction as though such transcript had been originally made, when the cause was transferred from one court to the other. [Acts 1929, ch. 244, § 15 (Acts 1931, p. 665); P.L.3-1989, § 193.]

Cross References. Circuit courts, transfer of cases, and causes to superior court, IC 33-5-4-2.

Circuit courts, transfer of cases from superior court, IC 33-5-4-1.

33-5-11-16. Entry of judgments, executions and papers. — It shall be the duty of the clerk of the Grant Circuit Court to enter all judgments rendered in, and executions issued from, and papers filed in said superior courts in the same judgment and execution dockets, lis pendens records and

other dockets and records, except order-books, as are used for judgments and executions and proceedings of the circuit court of said county; the clerk noting whether any judgment or proceeding is a judgment or proceeding of the circuit or superior court. [Acts 1929, ch. 244, § 16 (Acts 1931, p. 665.)]

CHAPTER 12

DELAWARE SUPERIOR COURT NO. 2

33-5-12-1 — 33-5-12-22. [Repealed.]

Compiler's Notes. This chapter, concerning Delaware Superior Court No. 2, was repealed by Acts 1981, P.L. 272, § 146 and

P.L.292-1983, § 19. For present law concerning the Delaware superior courts, see IC 33-5-12.1.

CHAPTER 12.1

DELAWARE SUPERIOR COURTS NO. 1, NO. 2, NO. 3, AND NO. 4

SECTION.

- 33-5-12.1-1. Courts established — Seal.
- 33-5-12.1-2. Judge — Election — Eligibility to hold office.
- 33-5-12.1-3. Jurisdiction.
- 33-5-12.1-4. Powers of judges.
- 33-5-12.1-5 — 33-5-12.1-8. [Repealed.]
- 33-5-12.1-9. Bailiff and official court reporter.
- 33-5-12.1-10. Court books.
- 33-5-12.1-11. Location of sessions — Facilities.

SECTION.

- 33-5-12.1-12. Jury commissioners — Juries — Grand jury.
- 33-5-12.1-13. [Repealed.]
- 33-5-12.1-14. Transfer of actions.
- 33-5-12.1-15. Circuit judge sitting in superior court — Superior judge sitting in circuit court.
- 33-5-12.1-16. Standard small claims and misdemeanor divisions.

33-5-12.1-1. Courts established — Seal. — There are established four (4) courts of record to be known as the Delaware Superior Courts No. 1, No. 2, No. 3, and No. 4. Each court may have a seal containing the words "Delaware Superior Court (insert No. 1; No. 2; No. 3; No. 4.), Delaware County, Indiana". Delaware County comprises the judicial district of each court. [IC 33-5-12.1-1, as added by P.L.292-1983, § 5.]

Cross References. Creation of Delaware Superior Court Judicial District, IC 33-5-11-1.

33-5-12.1-2. Judge — Election — Eligibility to hold office. — (a) Each court has one (1) judge, who shall be elected at the general election every six (6) years in Delaware County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of a Delaware superior court, a person must:

- (1) Be a resident of Delaware County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana.

[IC 33-5-12.1-2, as added by P.L.292-1983, § 5.]

33-5-12.1-3. Jurisdiction. — (a) Delaware Superior Courts No. 1 and No. 2 have the same jurisdiction as the Delaware Circuit Court.

(b) Delaware Superior Courts No. 3 and No. 4 have the same jurisdiction as the Delaware Circuit Court, except that these superior courts do not have jurisdiction over:

- (1) Class A, B, and C felonies;
- (2) Probate matters; and
- (3) Juvenile matters.

[IC 33-5-12.1-3, as added by P.L.292-1983, § 5.]

33-5-12.1-4. Powers of judges. — The judge of each court has the same powers relating to the conduct of the business of his court as the judge of the Delaware Circuit Court. Each judge may administer oaths, solemnize marriages, and take and certify acknowledgements of deeds. [IC 33-5-12.1-4, as added by P.L.292-1983, § 5.]

33-5-12.1-5 — 33-5-12.1-8. [Repealed.]

Compiler's Notes. These sections, concerning salary paid judges, dockets of small claims and misdemeanor division and provision for a traffic violations bureau, and taxation and disbursement of costs and clerk and

sheriff of court, were repealed by P.L.167-1984, § 28 and by P.L.171-1984, § 80.

Prior to its repeal by P.L.167-1984, § 92, IC 33-5-12.1-6 had been amended by P.L.171-1984, § 28.

33-5-12.1-9. Bailiff and official court reporter. — Each Delaware superior court judge shall appoint a bailiff and an official court reporter for his court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Delaware Circuit Court. Their salaries shall be paid monthly out of the treasury of Delaware County as provided by law. [IC 33-5-12.1-9, as added by P.L.292-1983, § 5.]

33-5-12.1-10. Court books. — The clerk of the court, under the direction of the judge of each court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for each court, which shall be kept separately from the books and papers of other courts. [IC 33-5-12.1-10, as added by P.L.292-1983, § 5.]

33-5-12.1-11. Location of sessions — Facilities. — Each court shall hold its sessions in such places within Delaware County as the board of county commissioners of Delaware County may provide. The board of county commissioners shall provide and maintain suitable courtrooms and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Delaware County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-12.1-11, as added by P.L.292-1983, § 5.]

33-5-12.1-12. Jury commissioners — Juries — Grand jury. — The jury commissioners appointed by the judge of the Delaware Circuit Court shall serve as the jury commissioners for each Delaware superior court. Juries shall be selected in the same manner as juries for the Delaware Circuit Court. The grand jury selected for the Delaware Circuit Court shall

also serve as the grand jury for each Delaware superior court as may be necessary. [IC 33-5-12.1-12, as added by P.L.292-1983, § 5.]

33-5-12.1-13. [Repealed.]

Compiler's Notes. This section, concerning fees paid jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-12.1-14. Transfer of actions. — The judge of the Delaware Circuit Court may, with the consent of a judge of a Delaware superior court, transfer any action or proceeding from the circuit court to that superior court. A judge of a Delaware superior court may, with consent of the judge of the circuit court, transfer any action or proceeding from his court to the circuit court. [IC 33-5-12.1-14, as added by P.L.292-1983, § 5.]

33-5-12.1-15. Circuit judge sitting in superior court — Superior judge sitting in circuit court. — The judge of the Delaware Circuit Court may, with the consent of a judge of the Delaware superior court, sit as the judge of that Delaware superior court in any matter as if he were the elected judge of that superior court. A Delaware superior court judge may, with consent of the judge of the circuit court, sit as the judge of the circuit court in any matter as if he were the elected judge of the circuit court. [IC 33-5-12.1-15, as added by P.L.292-1983, § 5.]

33-5-12.1-16. Standard small claims and misdemeanor divisions. — Delaware superior courts No. 2, No. 3, and No. 4 have standard small claims and misdemeanor divisions. [P.L.167-1984, § 48; P.L.133-1992, § 6.]

CHAPTER 12.5

DUBOIS SUPERIOR COURT

SECTION.

- 33-5-12.5-1. Creation — Seal.
- 33-5-12.5-2. Judge — Term and qualifications.
- 33-5-12.5-3. Jurisdiction.
- 33-5-12.5-4. Powers of judge.
- 33-5-12.5-5, 33-5-12.5-6. [Repealed.]
- 33-5-12.5-7. Costs.
- 33-5-12.5-8. Clerk and sheriff — Duties.
- 33-5-12.5-9. Bailiff and court reporter — Salaries.
- 33-5-12.5-10. Clerk to provide and keep separate books and papers.

SECTION.

- 33-5-12.5-11. Location of sessions — Provision and maintenance of facilities.
- 33-5-12.5-12. Jury commissioners — Selection of jurors.
- 33-5-12.5-13. Juror and witness fees.
- 33-5-12.5-14. Transfer of actions or proceedings.
- 33-5-12.5-15. Circuit and superior court judges may sit in either court.
- 33-5-12.5-16. Standard small claims and misdemeanor division.

33-5-12.5-1. Creation — Seal. — There is established a court of record to be known as the Dubois Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Dubois Superior Court, Dubois County, Indiana”. Dubois County comprises the judicial district of the court. [IC 33-5-12.5-1, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-2. Judge — Term and qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Dubois County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Dubois County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana. [IC 33-5-12.5-2, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-3. Jurisdiction. — The court has the same jurisdiction as the Dubois circuit court. [IC 33-5-12.5-3, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Dubois circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-12.5-4, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-5, 33-5-12.5-6. [Repealed.]

Compiler's Notes. These sections, concerning salary of judge and small claims and misdemeanor division, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-12.5-7. Costs. — Costs shall be taxed and disbursed in the same manner as costs in the Dubois circuit court. [IC 33-5-12.5-7, as added by Acts 1980, P.L. 187, § 4; P.L.3-1989, § 194.]

33-5-12.5-8. Clerk and sheriff — Duties. — The clerk of the Dubois circuit court shall serve as the clerk of the court, and the sheriff of Dubois County shall serve as the sheriff of the court. They shall attend the court and perform the same duties relating to their offices as they are required to do with respect to the Dubois circuit court. [IC 33-5-12.5-8, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-9. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Dubois circuit court. Their salaries shall be paid monthly out of the treasury of Dubois County as provided by law. [IC 33-5-12.5-9, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-10. Clerk to provide and keep separate books and papers. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-12.5-10, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-11. Location of sessions — Provision and maintenance of facilities. — The court shall hold its sessions in the Dubois County courthouse in Jasper, Indiana, or in such other places in the county as the board of county commissioners of Dubois County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Dubois County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-12.5-11, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-12. Jury commissioners — Selection of jurors. — The jury commissioners appointed by the judge of the Dubois Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Dubois Circuit Court. The grand jury selected for the Dubois Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-12.5-12, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-13. Juror and witness fees. — Jurors and witnesses in the court are entitled to the same fees as jurors and witnesses in the Dubois Circuit Court. [IC 33-5-12.5-13, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-14. Transfer of actions or proceedings. — The judge of the Dubois Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-12.5-14, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-15. Circuit and superior court judges may sit in either court. — The judge of the Dubois Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-12.5-15, as added by Acts 1980, P.L. 187, § 4.]

33-5-12.5-16. Standard small claims and misdemeanor division. — The Dubois Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 49.]

CHAPTER 13

ELKHART SUPERIOR COURT

33-5-13-1 — 35-5-13-15. [Repealed.]

Compiler's Notes. This chapter, concerning the Elkhart Superior Court, was repealed

by P.L.302-1983, § 6. For present law, see IC 33-5-13.1.

CHAPTER 13.1

ELKHART SUPERIOR COURT

SECTION.

- 33-5-13.1-1. Court established — Seal.
- 33-5-13.1-2. Election and term of judges — Qualifications.
- 33-5-13.1-3. Jurisdiction.
- 33-5-13.1-4. Powers of judges.
- 33-5-13.1-5 — 33-5-13.1-7. [Repealed.]
- 33-5-13.1-8. Bailiff and official court reporter.
- 33-5-13.1-9. Record books.
- 33-5-13.1-10. Location of sessions.

SECTION.

- 33-5-13.1-11. Jury commissioners — Juries.
- 33-5-13.1-12. [Repealed.]
- 33-5-13.1-13. Transfer of actions to and from circuit court.
- 33-5-13.1-14. Circuit judge sitting in superior court — Superior judge sitting in circuit court.
- 33-5-13.1-15. Chief judge.
- 33-5-13.1-16. Appointment of magistrate.

33-5-13.1-1. Court established — Seal. — There is established a court of record to be known as the Elkhart Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Elkhart Superior Court, Elkhart County, Indiana”. Elkhart County comprises the judicial district of the court. [IC 33-5-13.1-1, as added by P.L.302-1983, § 1.]

33-5-13.1-2. Election and term of judges — Qualifications. — (a) The court has five (5) judges, who shall be elected at the general election every six (6) years in Elkhart County. A judge’s term begins January 1 following the judge’s election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as a judge of the court, a person must:

- (1) Be a resident of Elkhart County;
- (2) Be under seventy (70) years of age at the time the judge takes office;
- and
- (3) Be admitted to the bar of Indiana.

[IC 33-5-13.1-2, as added by P.L.302-1983, § 1; P.L.18-1995, § 26.]

33-5-13.1-3. Jurisdiction. — (a) The court has the same jurisdiction as the Elkhart Circuit Court.

(b) The court has a standard small claims and misdemeanor division. [IC 33-5-13.1-3, as added by P.L.302-1983, § 1; P.L.18-1995, § 27.]

NOTES TO DECISIONS

In General.

The same jurisdiction could be conferred on superior courts as was possessed by circuit courts. *Woods v. McCay*, 144 Ind. 316, 43 N.E. 269, 33 L.R.A. 97 (1895); *Swartz v. Board of County Comm’rs*, 158 Ind. 141, 63 N.E. 31 (1902); *Board of Comm’rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

Where a case in superior court, in which a motion for judgment nunc pro tunc was pending, was transferred by consent to the circuit court, the moving parties were thereafter estopped to question the circuit court’s jurisdiction, and could not have the case transferred. *Willard v. Loucks*, 97 Ind. App. 131, 175 N.E. 256 (1931).

33-5-13.1-4. Powers of judges. — The judges of the court may make rules for conducting the business of the court. A judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Elkhart Circuit Court. A judge of the court may administer oaths,

solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-13.1-4, as added by P.L.302-1983, § 1.]

33-5-13.1-5 — 33-5-13.1-7. [Repealed.]

Compiler's Notes. These sections, concerning salary of judges, costs and clerk and sheriff of court, were repealed by P.L.171-1984, § 80.

33-5-13.1-8. Bailiff and official court reporter. — Each judge of the court shall appoint a bailiff and an official court reporter for his court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Elkhart Circuit Court. Their salaries shall be paid monthly out of the treasury of Elkhart County as provided by law. [IC 33-5-13.1-8, as added by P.L.302-1983, § 1.]

33-5-13.1-9. Record books. — The clerk of the court, under the direction of the judges of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-13.1-9, as added by P.L.302-1983, § 1.]

33-5-13.1-10. Location of sessions. — Three (3) of the judges of the court shall hold sessions in the Elkhart County courts building in the city of Elkhart. Two (2) of the judges of the court shall hold sessions in an appropriate place in the city of Goshen selected by the county commissioners. The board of county commissioners shall provide and maintain suitable courtrooms and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Elkhart County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-13.1-10, as added by P.L.302-1983, § 1; P.L.18-1995, § 28.]

33-5-13.1-11. Jury commissioners — Juries. — The jury commissioners appointed by the judge of the Elkhart Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Elkhart Circuit Court. The grand jury selected for the Elkhart Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-13.1-11, as added by P.L.302-1983, § 1.]

33-5-13.1-12. [Repealed.]

Compiler's Notes. This section, concerning fees for jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 and IC 33-19-1-6.

33-5-13.1-13. Transfer of actions to and from circuit court. — The judge of the Elkhart Circuit Court may, with the consent of a judge of the court, transfer any action or proceeding from the circuit court to the judge's court. A judge of the court may, with consent of the judge of the circuit court,

transfer any action or proceeding from his court to the circuit court. [IC 33-5-13.1-13, as added by P.L.302-1983, § 1.]

33-5-13.1-14. Circuit judge sitting in superior court — Superior judge sitting in circuit court. — The judge of the Elkhart Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. A judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-13.1-14, as added by P.L.302-1983, § 1.]

33-5-13.1-15. Chief judge. — The court may designate by rule one (1) of the judges as chief judge and may fix the time he shall preside. The chief judge shall be responsible for the operation and conduct of the court. [IC 33-5-13.1-15, as added by P.L.302-1983, § 1.]

33-5-13.1-16. Appointment of magistrate. — (a) The judges of the Elkhart circuit and superior courts may jointly appoint one (1) full-time magistrate under IC 33-4-7.

(b) The magistrate continues in office until removed by the judges of the circuit and superior courts. [P.L.18-1995, § 29.]

CHAPTER 14

ELKHART SUPERIOR COURT NO. 2

33-5-14-1 — 33-5-14-20. [Repealed.]

Compiler's Notes. This chapter, concerning Elkhart Superior Court No. 2, was repealed by P.L.302-1983, § 5. For present law, see IC 33-5-13.1.

CHAPTER 15

ELKHART SUPERIOR COURT JUDGE — PLACE OF HOLDING COURT

33-5-15-1 — 33-5-15-4. [Repealed.]

Compiler's Notes. This chapter, concerning the Elkhart Superior Court judge and the location of the sessions, was repealed by Acts 1981, P.L. 272, § 146 and P.L.302-1983, § 5. For present law, see IC 33-5-13.1-2 and IC 33-5-13.1-10.

CHAPTER 16

ELKHART SUPERIOR COURT — JURY COMMISSIONERS — DUTIES RELATING TO JURY SELECTION

33-5-16-1. [Repealed.]

Compiler's Notes. This chapter, concerning jury commissioners and juries in the Elkhart Superior Court, was repealed by P.L.302-1983, § 5. For present law, see IC 33-5-13.1-11.

CHAPTER 17

ELKHART SUPERIOR COURT — JURY COMMISSIONERS —
APPOINTMENT AND DUTIES IN GENERAL**33-5-17-1. [Repealed.]**

Compiler's Notes. This chapter, concerning the appointment and duties of jury commissioners in Elkhart Superior Court, was

repealed by P.L.302-1983, § 5. For present law, see IC 33-5-13.1-11.

CHAPTER 17.1

FAYETTE SUPERIOR COURT

SECTION.

33-5-17.1-1. Court created — Seal.

33-5-17.1-2. Judge.

33-5-17.1-3. Jurisdiction.

33-5-17.1-4. Powers of judge.

33-5-17.1-5. Bailiff and court reporter.

33-5-17.1-6. Books.

33-5-17.1-7. Sessions — Rooms and facilities.

33-5-17.1-8. Jury commissioners.

SECTION.

33-5-17.1-9. Transfer of actions or proceedings.

33-5-17.1-10. Authority of circuit and superior court judges to sit in either court.

33-5-17.1-11. Standard small claims and misdemeanor division.

33-5-17.1-1. Court created — Seal. — There is established a court of record to be known as the Fayette superior court (referred to as the court in this chapter). The court may have a seal containing the words “Fayette Superior Court, Fayette County, Indiana.” Fayette County comprises the judicial district of the court. [P.L.188-1986, § 12.]

33-5-17.1-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Fayette County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Fayette County;

(2) Be under seventy (70) years of age at the time of taking office; and

(3) Be admitted to the bar of Indiana.

[P.L.188-1986, § 12.]

33-5-17.1-3. Jurisdiction. — The court has the same jurisdiction as the Fayette circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.188-1986, § 12.]

33-5-17.1-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Fayette circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.188-1986, § 12.]

33-5-17.1-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official

court reporter for the Fayette circuit court. Their salaries shall be paid monthly out of the treasury of Fayette County as provided by law. [P.L.188-1986, § 12.]

33-5-17.1-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.188-1986, § 12.]

33-5-17.1-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Fayette County courthouse in Connersville, Indiana, or in such other places in the county as the Fayette County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Fayette County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.188-1986, § 12.]

33-5-17.1-8. Jury commissioners. — The jury commissioners appointed by the judge of the Fayette circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Fayette circuit court. The grand jury selected for the Fayette circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.188-1986, § 12.]

33-5-17.1-9. Transfer of actions or proceedings. — The judge of the Fayette circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.188-1986, § 12.]

33-5-17.1-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Fayette circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.188-1986, § 12.]

33-5-17.1-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.188-1986, § 12.]

CHAPTER 18

ELKHART SUPERIOR COURT — TERMS — PROCESS — RECESS

33-5-18-1 — 33-5-18-3. [Repealed.]

Compiler's Notes. This chapter, concerning the terms of the Elkhart Superior Court, was repealed by P.L.302-1983, § 5. For present law, see IC 33-5-13.1.

CHAPTER 18.1

FLOYD SUPERIOR COURT

SECTION.

33-5-18.1-1. Creation — Name — Seal.
 33-5-18.1-2. Judge — Election — Term.
 33-5-18.1-3. Jurisdiction.
 33-5-18.1-4. Powers of judge.
 33-5-18.1-5 — 33-5-18.1-7. [Repealed.]
 33-5-18.1-8. Bailiff and court reporter.
 33-5-18.1-9. Record books.
 33-5-18.1-10. Location of sessions.

SECTION.

33-5-18.1-11. Jury commissioners — Juries.
 33-5-18.1-12. [Repealed.]
 33-5-18.1-13. Transfer of actions to or from circuit court.
 33-5-18.1-14. Circuit judge sitting in superior court — Superior judge sitting in circuit court.

33-5-18.1-1. Creation — Name — Seal. — There is established a court of record to be known as the Floyd Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Floyd Superior Court, Floyd County, Indiana”. Floyd County comprises the judicial district of the court. [IC 33-5-18.1-1, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-2. Judge — Election — Term. — The court has one (1) judge, who shall be elected at the general election every six (6) years in Floyd County. His term begins January 1 following his election and ends December 31 following the election of his successor. [IC 33-5-18.1-2, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-3. Jurisdiction. — The court has the same jurisdiction as the Floyd Circuit Court, except that only the circuit court has juvenile jurisdiction. [IC 33-5-18.1-3, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Floyd Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-18.1-4, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-5 — 33-5-18.1-7. [Repealed.]

Compiler's Notes. These sections, concerning salary of judge, costs and clerk and sheriff of court, were repealed by P.L.171-1984, § 80.

33-5-18.1-8. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Floyd Circuit Court. Their salaries shall be paid monthly out of the treasury of Floyd County as provided by law. [IC 33-5-18.1-8, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-9. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-18.1-9, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-10. Location of sessions. — The court shall hold its sessions in the Floyd County courthouse in New Albany, Indiana, or in such other places in the county as the board of county commissioners of Floyd County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Floyd County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-18.1-10, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-11. Jury commissioners — Juries. — The jury commissioners appointed by the judge of the Floyd Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Floyd Circuit Court. The grand jury selected for the Floyd Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-18.1-11, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-12. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-18.1-13. Transfer of actions to or from circuit court. — The judge of the Floyd Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-18.1-13, as added by Acts 1977, P.L. 317, § 1.]

33-5-18.1-14. Circuit judge sitting in superior court — Superior judge sitting in circuit court. — The judge of the Floyd Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he were an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he were an elected judge of the circuit court. [IC 33-5-18.1-14, as added by Acts 1977, P.L. 317, § 1.]

CHAPTER 18.3
GIBSON SUPERIOR COURT

SECTION.	SECTION.
33-5-18.3-1. Court established — Seal — Judicial district.	33-5-18.3-3. Jurisdiction.
33-5-18.3-2. Judge — Election — Term — Eligibility.	33-5-18.3-4. Powers of judge.
	33-5-18.3-5. Bailiff — Court reporter — Salaries.

SECTION.

33-5-18.3-6. Clerk of court — Duties.
 33-5-18.3-7. Courthouse — Facilities.
 33-5-18.3-8. Juries — Jury commissioners —
 Selection of juries — Grand
 jury.
 33-5-18.3-9. Transfer of actions.

SECTION.

33-5-18.3-10. Circuit judge sitting in superior
 court — Superior judge sitting
 in circuit court.
 33-5-18.3-11. Standard small claims and mis-
 demeanor division.

33-5-18.3-1. Court established — Seal — Judicial district. — There is established a court of record to be known as the Gibson Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Gibson Superior Court, Gibson County, Indiana.” Gibson County comprises the judicial district of the court. [P.L.167-1984, § 50.]

33-5-18.3-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Gibson County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Gibson County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana.

[P.L.167-1984, § 50.]

33-5-18.3-3. Jurisdiction. — The court has the same jurisdiction as the Gibson circuit court, except that only the circuit court has juvenile and probate jurisdiction. [P.L.167-1984, § 50; P.L.297-1985, § 1.]

33-5-18.3-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Gibson Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.167-1984, § 50.]

33-5-18.3-5. Bailiff — Court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Gibson Circuit Court. Their salaries shall be paid monthly out of the treasury of Gibson County as provided by law. [P.L.167-1984, § 50.]

33-5-18.3-6. Clerk of court — Duties. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.167-1984, § 50.]

33-5-18.3-7. Courthouse — Facilities. — The court shall hold its sessions in the Gibson County courthouse in Princeton, Indiana, or in such

other places in the county as the board of county commissioners of Gibson County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Gibson County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [P.L.167-1984, § 50.]

33-5-18.3-8. Juries — Jury commissioners — Selection of juries — Grand jury. — The jury commissioners appointed by the judge of the Gibson Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Gibson Circuit Court. The grand jury selected for the Gibson Circuit Court shall also serve as the grand jury for the court as may be necessary. [P.L.167-1984, § 50.]

33-5-18.3-9. Transfer of actions. — The judge of the Gibson Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.167-1984, § 50.]

33-5-18.3-10. Circuit judge sitting in superior court — Superior judge sitting in circuit court. — The judge of the Gibson Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [P.L.167-1984, § 50.]

33-5-18.3-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.167-1984, § 50.]

CHAPTER 19

GRANT SUPERIOR COURT NO. 2

SECTION.	SECTION.
33-5-19-1. Creation of court — Judge — Election — Term.	33-5-19-6. Rules and regulations — Incidental powers of judge.
33-5-19-2. Name — Jurisdiction — Seal.	33-5-19-7. Jury commissioners — Appointment — Oath.
33-5-19-3. Bailiff and court reporter.	33-5-19-8. Applicability of laws concerning jury commissioners and juries.
33-5-19-4. Where court held — Provisions by county commissioners — Appropriations by county council.	33-5-19-9. [Repealed.]
33-5-19-5. Concurrent jurisdiction with circuit court.	

33-5-19-1. Creation of court — Judge — Election — Term. — There is hereby created a Superior Court No. 2, in and for the county of Grant, Indiana, which court shall consist of one (1) judge, who shall hold his office for a term of six (6) years, beginning on the first day of January after his

election, and until his successor is elected and qualified. Every six (6) years, the voters of Grant County shall elect at the general election a judge for the superior court. [Acts 1967, ch. 12, § 1; 1976, P.L. 133, § 9.]

Cross References. Grant Superior Court, IC 33-5-11-1, IC 33-5-11-10 — IC 33-5-11-16.

33-5-19-2. Name — Jurisdiction — Seal. — The Superior Court No. 2 created by the provisions of this chapter shall be known as the “Grant County Superior Court No. 2,” and the county of Grant shall constitute the judicial district of said court. The court shall be a court of record and general jurisdiction, and shall have a seal containing the words “Grant Superior Court No. 2, of Grant County, Indiana.” [Acts 1967, ch. 12, § 2; 1981, P.L. 272, § 46.]

33-5-19-3. Bailiff and court reporter. — The judge of the Grant Superior Court No. 2 shall appoint a bailiff and an official court reporter for said court, to serve as such during the pleasure of the court. The judge shall fix their compensation within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters. The compensation shall be paid monthly out of the treasury of Grant County, in the manner provided by law. [Acts 1967, ch. 12, § 3; P.L. 171-1984, § 30.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

33-5-19-4. Where court held — Provisions by county commissioners — Appropriations by county council. — The Grant Superior Court No. 2, shall hold its sessions in a place to be determined by the county council of Grant County, Indiana; and the board of county commissioners of Grant County, shall provide and maintain in the courthouse a suitable and convenient courtroom for the holding of said court, together with a suitable and convenient jury room and offices for the judge and the official court reporter. The board of county commissioners shall provide all necessary furniture and equipment for the rooms and offices of the court, and all necessary dockets, books and records for the court. The county council shall make the necessary appropriations from the general fund of the county for the purpose of carrying out the provisions of this chapter. [Acts 1967, ch. 12, § 5; 1981, P.L. 272, § 47.]

33-5-19-5. Concurrent jurisdiction with circuit court. — The Grant Superior Court No. 2 has the same jurisdiction as the Grant Circuit Court. [Acts 1967, ch. 12, § 6; 1978, P.L. 136, § 37.]

33-5-19-6. Rules and regulations — Incidental powers of judge. — The judge of the Grant Superior Court No. 2, shall have full power and authority to make and adopt rules and regulations for conducting the business of the Grant Superior Court No. 2, not repugnant to the laws of the state of Indiana or the rules of the Supreme Court of the state of Indiana. The judge shall have all powers incident to a court of record in relation to the

attendance of witnesses and punishment for contempt, and the power to enforce his orders. The judge of said court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court; and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1967, ch. 12, § 7.]

33-5-19-7. Jury commissioners — Appointment — Oath. — The judge of Grant Superior Court No. 2, shall during the last term beginning in each calendar year, appoint for the next calendar year, two (2) persons, one of whom shall be a resident of the city in which terms of the court shall be held as jury commissioners, who shall be freeholders and voters of Grant County, Indiana, well known to be of different political faith and of good character for intelligence, morality and integrity, and cause them to appear and take an oath or affirmation in open court, to be entered of record in the order-book of the court in the following form: "You do solemnly swear (or affirm) that you will honestly, and without favor or prejudice, perform the duties of jury commissioners during your term of office, that, in selecting persons to be drawn as jurors, you will select none but persons whom you believe to be of good repute for integrity and honesty, that you will select (none of whom you have been or may be requested to select), and that, in all of your selections, you will endeavor to promote only the impartial administration of justice." The court shall thereupon instruct them concerning their duties. [Acts 1967, ch. 12, § 8.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3, IC 33-4-5-9.

Jury commissioners, IC 33-4-5-1 — IC 33-4-5-9.

33-5-19-8. Applicability of laws concerning jury commissioners and juries. — All laws of the state of Indiana, now in force or that may hereafter be enacted governing the powers, duties and procedure of jury commissioners in circuit courts of the state of Indiana, their failure to act, their contempt of court, a vacancy and the appointment of successor, their qualifications, their selection of petit jurors, their keeping a box of prospective jurors locked, the manner of drawing petit jurors' names therefrom, the selection of additional jurors, the selection of special venires and laws of the state of Indiana, pertaining to special juries, struck jury with or without notice, the duties of the clerk of the court pertaining to the drawing and recording of names of prospective petit jurors, shall be applicable to and govern the jury commissioners duly appointed and the selection of petit jurors juries in the Grant Superior Court No. 2. [Acts 1967, ch. 12, § 9.]

Cross References. Jury fee, per diem and mileage, IC 33-19-1-4.

jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

Selection, qualification and summoning of

33-5-19-9. [Repealed.]

Compiler's Notes. This section, concerning transfers of cases to Grant Superior Court No. 2, was repealed by Acts 1981, P.L. 272,

§ 146. For law on transfers from circuit courts to superior courts, see IC 33-5-4-2.

CHAPTER 19.3

GRANT SUPERIOR COURT NO. 3

SECTION.

- 33-5-19.3-1. Establishment of court — Seal.
- 33-5-19.3-2. Judge — Election, term, and qualifications.
- 33-5-19.3-3. Jurisdiction.
- 33-5-19.3-4. Powers of judge.
- 33-5-19.3-5. Bailiff — Official court reporter.
- 33-5-19.3-6. Record books.
- 33-5-19.3-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-19.3-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-19.3-9. Transfer of actions.
- 33-5-19.3-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-19.3-11. Standard small claims and misdemeanor division.

33-5-19.3-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Grant superior court No. 3 (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Grant Superior Court No. 3, Grant County, Indiana.”

(c) Grant County comprises the judicial district of the court. [P.L.133-1992, § 7.]

33-5-19.3-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Grant County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Grant County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 7.]

33-5-19.3-3. Jurisdiction. — The court has the same jurisdiction as the Grant circuit court. [P.L.133-1992, § 7.]

33-5-19.3-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judges of the Grant circuit court, Grant superior court, and Grant superior court No. 2; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 7.]

33-5-19.3-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Grant circuit court, Grant superior court, and Grant superior court No. 2; and
- (2) Paid monthly out of the treasury of Grant County as provided by law. [P.L.133-1992, § 7.]

33-5-19.3-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 7.]

33-5-19.3-7. Location of sessions — Rooms and facilities provided. — (a) The court shall hold its sessions in:

- (1) The Grant County courthouse in Marion, Indiana; or
- (2) Other places in the county that the Grant County executive provides.

(b) The Grant County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Grant County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 7.]

33-5-19.3-8. Jury commissioners — Selection of juries — Grand jury. — (a) Each year the judge of the court shall appoint two (2) individuals who reside in Grant County to serve as jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Grant circuit court.

(c) The grand jury selected for the Grant circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 7.]

33-5-19.3-9. Transfer of actions. — (a) The judge of the Grant circuit court, Grant superior court, or Grant superior court No. 2 may, with the consent of the judge of the court, transfer any action or proceeding from the Grant circuit court, Grant superior court, or Grant superior court No. 2 to the court.

(b) The judge of the court may, with the consent of the judge of the Grant circuit court, Grant superior court, or Grant superior court No. 2, transfer any action or proceeding from the court to the Grant circuit court, Grant superior court, or Grant superior court No. 2. [P.L.133-1992, § 7.]

33-5-19.3-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the Grant circuit

court, Grant superior court, or Grant superior court No. 2 may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Grant circuit court, Grant superior court, or Grant superior court No. 2, sit as a judge of the Grant circuit court, Grant superior court, or Grant superior court No. 2 in any matter as if an elected judge of the Grant circuit court, Grant superior court, or Grant superior court No. 2. [P.L.133-1992, § 7.]

33-5-19.3-11. Standard small claims and misdemeanor division. —

(a) The court has a standard small claims and misdemeanor division.

(b) Notwithstanding IC 33-5-2-4, the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars (\$6,000) in order to bring the claim within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000). [P.L.133-1992, § 7.]

CHAPTER 19.5

GREENE SUPERIOR COURT

SECTION.

33-5-19.5-1. Court established — Seal — Jurisdiction.

33-5-19.5-2. Judge — Election — Term — Eligibility.

33-5-19.5-3. Concurrent jurisdiction with circuit court.

33-5-19.5-4. Power of judge concurrent with circuit court power.

33-5-19.5-5. Bailiff and court reporter — Salaries.

33-5-19.5-6. Books.

SECTION.

33-5-19.5-7. Sessions — Rooms and facilities — Funds for maintenance.

33-5-19.5-8. Jury commissioners.

33-5-19.5-9. Transfer of actions or proceedings.

33-5-19.5-10. Authority of circuit and superior court judges to sit in either court.

33-5-19.5-11. Standard small claims and misdemeanor division.

33-5-19.5-1. Court established — Seal — Jurisdiction. — There is established a court of record to be known as the Greene superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Greene Superior Court, Greene County, Indiana.” Greene County comprises the judicial district of the court. [P.L.176-1988, § 2.]

33-5-19.5-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Greene County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Greene County;

(2) Be less than seventy (70) years of age at the time of taking office;
and

(3) Be admitted to the practice of law in Indiana.

[P.L.176-1988, § 2.]

33-5-19.5-3. Concurrent jurisdiction with circuit court. — The court has the same jurisdiction as the Greene circuit court. [P.L.176-1988, § 2.]

33-5-19.5-4. Power of judge concurrent with circuit court power. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Greene circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.176-1988, § 2.]

33-5-19.5-5. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Greene circuit court. Their salaries shall be paid monthly out of the treasury of Greene County as provided by law. [P.L.176-1988, § 2.]

33-5-19.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.176-1988, § 2.]

33-5-19.5-7. Sessions — Rooms and facilities — Funds for maintenance. — The court shall hold its sessions in the Greene County courthouse in Bloomfield, Indiana, or in such other places in the county as the Greene County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Greene County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.176-1988, § 2.]

33-5-19.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the Greene circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Greene circuit court. The grand jury selected for the Greene circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.176-1988, § 2.]

33-5-19.5-9. Transfer of actions or proceedings. — The judge of the Greene circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the

court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.176-1988, § 2.]

33-5-19.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Greene circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.176-1988, § 2.]

33-5-19.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.176-1988, § 2.]

CHAPTER 19.8

HARRISON SUPERIOR COURT

SECTION.

- 33-5-19.8-1. Establishment of court — Seal.
- 33-5-19.8-2. Judge — Election, term, qualifications.
- 33-5-19.8-3. Jurisdiction.
- 33-5-19.8-4. Powers of judge.
- 33-5-19.8-5. Bailiff — Official court reporter.
- 33-5-19.8-6. Record books.
- 33-5-19.8-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-19.8-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-19.8-9. Transfer of actions.
- 33-5-19.8-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-19.8-11. Standard small claims and misdemeanor division.

33-5-19.8-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Harrison superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Harrison Superior Court, Harrison County, Indiana.”

(c) Harrison County comprises the judicial district of the court. [P.L.133-1992, § 8.]

33-5-19.8-2. Judge — Election, term, qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Harrison County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Harrison County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 8.]

33-5-19.8-3. Jurisdiction. — The court has the same jurisdiction as the Harrison circuit court. [P.L.133-1992, § 8; P.L.18-1995, § 30.]

33-5-19.8-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Harrison circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 8.]

33-5-19.8-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Harrison circuit court; and
- (2) Paid monthly out of the treasury of Harrison County as provided by law. [P.L.133-1992, § 8.]

33-5-19.8-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 8.]

33-5-19.8-7. Location of sessions — Rooms and facilities provided. — (a) The court shall hold sessions in:

- (1) The Harrison County courthouse in Corydon, Indiana; or
- (2) Other places in the county as the Harrison County executive may provide.

(b) The Harrison County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Harrison County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 8.]

33-5-19.8-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Harrison circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Harrison circuit court.

(c) The grand jury selected for the Harrison circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 8.]

33-5-19.8-9. Transfer of actions. — (a) The judge of the Harrison circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.133-1992, § 8.]

33-5-19.8-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the circuit court may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.133-1992, § 8.]

33-5-19.8-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 8.]

CHAPTER 20

HOWARD SUPERIOR COURT

33-5-20-1 — 33-5-20-6. [Repealed.]

Compiler's Notes. This chapter, providing for the Howard Superior Court, was repealed

by Acts 1973, P.L. 307, § 3. For present law, see IC 33-5-20.1-1 — IC 33-5-20.1-26.

CHAPTER 20.1

HOWARD SUPERIOR COURT

SECTION.

- 33-5-20.1-1. Establishment — Judges — Terms.
- 33-5-20.1-2. Name.
- 33-5-20.1-3. Seal.
- 33-5-20.1-4. Jurisdiction.
- 33-5-20.1-5. Court of record.
- 33-5-20.1-6. Rules of court — Incidental powers of judges.
- 33-5-20.1-7. Orders, injunctions and writs — Other powers of judges.
- 33-5-20.1-8. Location of sessions — Facilities provided by board of commissioners.
- 33-5-20.1-9 — 33-5-20.1-11. [Repealed.]
- 33-5-20.1-12. Books, papers and records.
- 33-5-20.1-13. Bailiff — Court reporter.
- 33-5-20.1-14. Rules of Supreme Court apply.
- 33-5-20.1-15. Petit jury — Duties of jury commissioners.

SECTION.

- 33-5-20.1-16. Fees of jurors and witnesses.
- 33-5-20.1-17. Appeals from orders or judgments.
- 33-5-20.1-18. Additional personnel.
- 33-5-20.1-19. Adoption of rules — Presiding judge.
- 33-5-20.1-20. Action by entire court — When decision of presiding judge controls.
- 33-5-20.1-21. Actions received from circuit court.
- 33-5-20.1-22. Transfer of actions to circuit court.
- 33-5-20.1-23. Circuit judge authorized to sit.
- 33-5-20.1-24. Judge — Election — Term.
- 33-5-20.1-25. Commissioning of judges — Vacancies.
- 33-5-20.1-26. Court of record — Jurisdiction.

33-5-20.1-1. Establishment — Judges — Terms. — There shall be and is hereby established a superior court in Howard County, Indiana, which shall consist of two (2) judges who shall hold their offices for six (6) years and until their successor [successors] shall have been elected and qualified. [IC 1971, 33-5-20.1-1, as added by Acts 1973, P.L. 307, § 1; Acts 1976, P.L. 133, § 10.]

Compiler's Notes. The bracketed word "successors" in this section was inserted by the compiler to correct an apparent error.

33-5-20.1-2. Name. — The court shall be named and styled “Howard Superior Court.” [IC 33-5-20.1-2, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-3. Seal. — The court shall have a seal consisting of a circular disk containing the words “Howard Superior Court,” an impression of which shall be spread of record upon the order book of the court. [IC 33-5-20.1-3, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-4. Jurisdiction. — The superior court, within and for the county, shall have original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity; probate and guardianship proceedings; actions for divorce, separation, or annulment of marriage; and in all criminal cases and proceedings; Provided, however, That the superior court shall not have the jurisdiction of a juvenile court or judge thereof, as defined by IC 33-12.

The superior court, within and for said county, shall have original and concurrent jurisdiction in all appeals or reviews from boards of county commissioners, other executive or administrative agencies or inferior courts, and all other appellate jurisdictions vested in the circuit court. [IC 33-5-20.1-4, as added by Acts 1973, P.L. 307, § 1; 1981, P.L. 272, § 48.]

Cross References. Jurisdiction of court, IC 33-5-20.1-26.

33-5-20.1-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-20.1-5, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Court of record, IC 33-5-20.1-26.

33-5-20.1-6. Rules of court — Incidental powers of judges. — The judges of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgement of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. [IC 33-5-20.1-6, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Rules for operation and conduct of court authorized, IC 33-5-20.1-19.

33-5-20.1-7. Orders, injunctions and writs — Other powers of judges. — The judges of the court shall have the same power to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas

corpus and of mandate and prohibition, to appoint receivers, masters and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof. [IC 33-5-20.1-7, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-8. Location of sessions — Facilities provided by board of commissioners. — The superior court of Howard County shall hold its sessions in the Howard County courthouse in the city of Kokomo, Indiana, or in such other convenient and suitable place as the board of county commissioners of Howard County shall provide. Said board of county commissioners shall provide and maintain a suitable and convenient courtroom for the holding of the court, with a suitable and convenient jury room and offices for the judge and the official court reporter, which rooms shall be ready for occupancy by July 1, 1974, and the county council shall meet and appropriate all necessary funds therefor. [IC 33-5-20.1-8, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-9 — 33-5-20.1-11. [Repealed.]

Compiler's Notes. These sections, concerning salaries of judges, clerk and sheriff and fees of court, were repealed by P.L.171-1984, § 80.

33-5-20.1-12. Books, papers and records. — The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee-books and such other books, papers and records as may be necessary for the court, and all books, papers and proceedings of the court shall be kept distinct and separate from those of other courts. [IC 33-5-20.1-12, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-13. Bailiff — Court reporter. — Each judge shall appoint a bailiff and court reporter whose duties, salary and term shall be regulated in the same manner as now or hereafter provided for the circuit court. [IC 33-5-20.1-13, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

33-5-20.1-14. Rules of Supreme Court apply. — All laws and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, change of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [IC 33-5-20.1-14, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-20.1-15. Petit jury — Duties of jury commissioners. — Prior to the commencement of any term of said court, at the time and place provided by law, the clerk of said court and jury commissioners appointed by the judge of the circuit court of said county as provided by law, shall proceed to select a petit jury, in the manner as is now provided by law, to serve at the next ensuing term of court, and the officers in selecting, and the clerk, in issuing process for, the jury, and the sheriff in serving the same, shall in all things be governed by the rules and regulations prescribed for the selection of petit jurors in the circuit court: Provided, That the court may order on what day of the term the jurors shall be summoned to attend the court. The judge of the court may order the selecting and summoning of other jurors for the court whenever the same may be necessary. [IC 33-5-20.1-15, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3, IC 33-4-5-9.	Jury fee, per diem and mileage, IC 33-19-1-4.
Jury commissioners, IC 33-4-5-1 — IC 33-4-5-9.	

33-5-20.1-16. Fees of jurors and witnesses. — Jurors and witnesses in attendance upon the court shall receive the same fees as are now or may hereafter be provided for by law for jurors and witnesses in the circuit court. [IC 33-5-20.1-16, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Jury fee, per diem and mileage, IC 33-19-1-4.

33-5-20.1-17. Appeals from orders or judgments. — Any party may appeal to the Supreme Court or Court of Appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. [IC 33-5-20.1-17, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-18. Additional personnel. — Each judge shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of his duties as judge of the court. [IC 33-5-20.1-18, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-19. Adoption of rules — Presiding judge. — The court shall adopt rules to provide for the operation and conduct of the court. The court shall designate one (1) of the judges as presiding judge who shall serve in that capacity for a period of three (3) years, at the end of which another judge shall be selected to serve as presiding judge for the same period. It shall be the responsibility of the presiding judge to ensure that said court operates efficiently and judicially. [IC 33-5-20.1-19, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Rules and regulations for conducting business of court authorized, IC 33-5-20.1-6.

33-5-20.1-20. Action by entire court — When decision of presiding judge controls. — Whenever any action of the entire court is required, then the judges of the court will act in concert. In the event of disagreement, the decision of the presiding judge shall control. [IC 33-5-20.1-20, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-21. Actions received from circuit court. — The judge of the circuit court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [IC 33-5-20.1-21, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-20.1-22. Transfer of actions to circuit court. — Any judge of this court may, with the consent of the judge of the circuit court transfer any action, cause or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [IC 33-5-20.1-22, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-1.

33-5-20.1-23. Circuit judge authorized to sit. — The judge of the Howard County Circuit Court shall, at his discretion and with the court's permission, be authorized to sit and to act as a judge of this court in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this court, with all the rights and powers as if he were a duly elected judge of this court, including the right to act as presiding judge and otherwise participate in the organization and administration of this court. [IC 33-5-20.1-23, as added by Acts 1973, P.L. 307, § 1.]

33-5-20.1-24. Judge — Election — Term. — The judge for this court shall be elected every six (6) years at the general election. The term of office shall begin the first day of January following his election, and continue for six (6) years and until his successor is elected and qualified. [IC 33-5-20.1-24, as added by Acts 1973, P.L. 307, § 1; Acts 1976, P.L. 133, § 11; P.L.3-1990, § 109.]

Cross References. Judges, commencement and expiration of terms of office, IC 33-13-5-1. Judges, admission to practice of law as a qualification, IC 33-13-9-1.

33-5-20.1-25. Commissioning of judges — Vacancies. — The judges of the Howard County Superior Court as created by this chapter shall be commissioned by the governor in the same manner as a judge of the circuit court and any vacancy occurring in the office of judge of such court shall be filled by appointment by the governor in the same manner as vacancies in the office of the judge of the circuit court. [IC 33-5-20.1-25, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Judges, vacancy in office, governor's power to fill, Indiana Const., art. 5, § 18.

33-5-20.1-26. Court of record — Jurisdiction. — Except as limited by this chapter, the court shall be a court of record and of general jurisdiction at law and equity, and its judgments, decrees, orders, and proceedings, shall have the same force and effect as to causes, proceedings, and matters within its jurisdiction as those of the circuit court and shall be enforced in the same manner. [IC 33-5-20.1-26, as added by Acts 1973, P.L. 307, § 1.]

Cross References. Court of record, IC 33-5-20.1-5. Jurisdiction of court, IC 33-5-20.1-4.

CHAPTER 20.2

HOWARD SUPERIOR COURT NO. 3

SECTION.

- 33-5-20.2-1. Establishment of court — Seal.
- 33-5-20.2-2. Judge — Election, term, and qualifications.
- 33-5-20.2-3. Jurisdiction.
- 33-5-20.2-4. Powers of judge.
- 33-5-20.2-5. Bailiff — Official court reporter.
- 33-5-20.2-6. Record books.
- 33-5-20.2-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-20.2-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-20.2-9. Transfer of actions.
- 33-5-20.2-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-20.2-11. Standard small claims and misdemeanor division.

33-5-20.2-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Howard superior court No. 3 (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Howard Superior Court No. 3, Howard County, Indiana.”

(c) Howard County comprises the judicial district of the court. [P.L.133-1992, § 9.]

33-5-20.2-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Howard County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Howard County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 9.]

33-5-20.2-3. Jurisdiction. — The court has the same jurisdiction as the Howard circuit court. [P.L.133-1992, § 9.]

33-5-20.2-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judges of the Howard circuit court, Howard superior court, and Howard superior court No. 2; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 9.]

33-5-20.2-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Howard circuit court, Howard superior court, and Howard superior court No. 2; and
- (2) Paid monthly out of the treasury of Howard County as provided by law. [P.L.133-1992, § 9.]

33-5-20.2-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 9.]

33-5-20.2-7. Location of sessions — Rooms and facilities provided.

— (a) The court shall hold its sessions in:

- (1) The Howard County courthouse in Kokomo, Indiana; or
- (2) Other places in the county that the Howard County executive provides.

(b) The Howard County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Howard County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 9.]

33-5-20.2-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioner for the Howard superior court shall serve as jury commissioner for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Howard circuit court.

(c) The grand jury selected for the Howard circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 9.]

33-5-20.2-9. Transfer of actions. — (a) The judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2 may, with the consent of the judge of the court, transfer any action or proceeding from the Howard circuit court, Howard superior court, or Howard superior court No. 2 to the court.

(b) The judge of the court may, with the consent of the judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2, transfer any action or proceeding from the court to the Howard circuit court, Howard superior court, or Howard superior court No. 2. [P.L.133-1992, § 9.]

33-5-20.2-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2 may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2, sit as a judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2 in any matter as if an elected judge of the Howard circuit court, Howard superior court, or Howard superior court No. 2. [P.L.133-1992, § 9.]

33-5-20.2-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 9.]

CHAPTER 21

HENRY SUPERIOR COURT

- SECTION.
- 33-5-21-1. Courts established — Election and terms of judges.
 - 33-5-21-1.5. “Court” defined.
 - 33-5-21-2. Name — Jurisdiction — Seal.
 - 33-5-21-3. Bailiff and court reporter.
 - 33-5-21-4. Where court held — Provision by county commissioners — Appropriation by county council.
 - 33-5-21-5. Concurrent jurisdiction with circuit court — Standard small claims and misdemeanor division.
 - 33-5-21-6. Powers of judges.

- SECTION.
- 33-5-21-7, 33-5-21-8. [Repealed.]
 - 33-5-21-9. Change of venue — Filing causes received on change of venue.
 - 33-5-21-10. Courts of record and general jurisdiction.
 - 33-5-21-11. [Repealed.]
 - 33-5-21-11.1. Jury commissioners.
 - 33-5-21-12. No authority to impanel grand jury.
 - 33-5-21-13. Books, papers, and records.
 - 33-5-21-14. Authority of circuit and superior court judges to sit in either court.

33-5-21-1. Courts established — Election and terms of judges. —

(a) There hereby is established a superior court No. 1 in and for the county of Henry, Indiana. The court shall consist of one (1) judge, who shall hold his office for six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified. Every six (6) years, the voters of Henry County shall elect at the general election a judge for the superior court No. 1.

(b) An additional court is established to be known as Henry superior court No. 2. Henry superior court No. 2 has one (1) judge, who is elected at the general election every six (6) years in Henry County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(c) To be eligible to hold office as a judge of a Henry superior court, a person must be:

- (1) A resident of Henry County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[Acts 1965, ch. 274, § 1; 1976, P.L. 133, § 12; P.L.40-1990, § 16.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Cross References. Admission to practice

of law as qualification, IC 33-13-9-1.

Beginning and expiration of term, IC 33-13-5-1.

33-5-21-1.5. "Court" defined. — As used in this chapter, "court" refers to a superior court established under section 1 [IC 33-5-21-1] of this chapter. [P.L.40-1990, § 17.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the section take effect January 1, 1991.

33-5-21-2. Name — Jurisdiction — Seal. — The courts shall be known as "Henry superior court No. 1" and "Henry superior court No. 2." The county of Henry shall constitute the judicial district of each court. Each court shall be a court of record and general jurisdiction, and shall have a seal containing the words, "Henry superior court No. 1 of Henry County, Indiana" or "Henry superior court No. 2 of Henry County, Indiana." [Acts 1965, ch. 274, § 2; P.L.40-1990, § 18.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

33-5-21-3. Bailiff and court reporter. — The judge of each court shall appoint a bailiff and an official court reporter for said court, to serve as such during the pleasure of the appointing judge. The appointing judge shall fix the compensation of the officers within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters. The same shall be paid monthly out of the treasury of Henry County in the manner

provided by law. [Acts 1965, ch. 274, § 3; P.L.171-1984, § 31; P.L.40-1990, § 19.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Cross References. Salary of bailiff, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-21-4. Where court held — Provision by county commissioners — Appropriation by county council. — Each Henry superior court shall hold its sessions in the Henry County courthouse, in the city of New Castle, Indiana, or in such other places in the county as the Henry County executive may provide, and the board of county commissioners of Henry County shall provide and maintain a suitable and convenient courtroom for the holding of each court with a suitable and convenient jury room and offices for the judges and each official court reporter, and the county council shall appropriate sufficient funds therefor. [Acts 1965, ch. 274, § 5; P.L.40-1990, § 20.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

33-5-21-5. Concurrent jurisdiction with circuit court — Standard small claims and misdemeanor division. — (a) The courts have the same jurisdiction as the Henry circuit court.

(b) Henry superior court No. 2 has a standard small claims and misdemeanor division. [Act 1965, ch. 274, § 6; 1978, P.L. 136, § 38; P.L.40-1990, § 21.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

33-5-21-6. Powers of judges. — The judge of each court has the same powers related to the conduct of the business of the court as the judge of the Henry circuit court. The judge may adopt rules for conducting the business of the judge's court not repugnant to the laws of the state of Indiana, or rules of the supreme court of the state. The judge also may administer oaths, solemnize marriages, take and certify acknowledgment of deeds and give all necessary certificates for the authentication of records and proceedings of the court. [Acts 1965, ch. 274, § 7; P.L.40-1990, § 22.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Cross References. Commencement of actions and the issuance and service of process. Rules TR. 3, 4 — 4.17.

33-5-21-7, 33-5-21-8. [Repealed.]

Compiler's Notes. These sections concerning the transfers of cases to Henry Super-

ior Court, and restriction on transfer of causes, were repealed by Acts 1981, P.L. 272.

§ 146 and by P.L.40-1990, § 58. For law on transfers from circuit court to superior court, see IC 33-5-4-2.

33-5-21-9. Change of venue — Filing causes received on change of venue. — (a) Change of venue from the judge or from the county may be had under the same terms, conditions and procedure applicable to changes of venue from the judge or the county in circuit courts.

(b) If a cause be received by the clerk of the Henry circuit court on change of venue from another county, the same shall be docketed in the Henry circuit court unless otherwise provided in the order or entry made in such cause in the county from which such change of venue was taken, in which case it shall be docketed as provided in such entry or order.

(c) The Henry circuit court may issue a general order transferring cases venued to the Henry circuit court from other counties to Henry superior court No. 1 or Henry superior court No. 2. A general order issued under this subsection may be amended by the circuit court. [Acts 1965, ch. 274, § 10; P.L.40-1990, § 23.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Cross References. Change from county,

venue, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-5-21-10. Courts of record and general jurisdiction. — Each court shall be a court of record and of general jurisdiction at law and equity, and its judgments, decrees, orders, and proceedings shall have the same force and effect as to causes, proceedings, and matters within its jurisdiction as those of the circuit court and shall be enforced in the same manner. [Acts 1965, ch. 274, § 11; P.L.40-1990, § 24.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-21-11. [Repealed.]

Compiler's Notes. This section, concerning jury commissioners, was repealed by P.L.40-1990, § 58, effective January 1, 1991.

33-5-21-11.1. Jury commissioners. — The jury commissioners appointed by the judge of the Henry circuit court shall serve as the jury commissioners for the courts. Juries shall be selected in the same manner as juries for the Henry circuit court. [P.L.40-1990, § 25.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the section take effect January 1, 1991.

33-5-21-12. No authority to impanel grand jury. — The judge of a court created by this chapter shall not have jurisdiction or authority to make an order requiring the clerk to issue a venire for a grand jury or to impanel

a grand jury, but the grand jury impanelled by the judge of the Henry circuit court shall also act as the grand jury for a court created by this chapter and such grand jury may return an indictment into the Henry circuit court or into a court created by this chapter as indictments are returned to the circuit court. [Acts 1965, ch. 274, § 13; 1981, P.L. 272, § 50; P.L.40-1990, § 26.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the amendment take effect January 1, 1991.

33-5-21-13. Books, papers, and records. — The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee books, and other books, papers, and records necessary for each court. All books, papers, and records necessary for each court and all books, papers, and proceedings of each court shall be kept distinct and separate from those of other courts. [P.L.40-1990, § 27.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the section take effect January 1, 1991.

33-5-21-14. Authority of circuit and superior court judges to sit in either court. — (a) The judge of the Henry circuit court may, with the consent of the judge of a court, sit as a judge of the court in any matter as if the judge of the circuit court was an elected judge of the court.

(b) The judge of a court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the court was an elected judge of the circuit court.

(c) The judge of a court may, with the consent of the judge of the other court, sit as a judge of the other court in any manner as if elected as the judge of the other court. [P.L.40-1990, § 28.]

Effective Dates. P.L.40-1990, § 71, declared an emergency and provided that the section take effect January 1, 1991.

CHAPTER 22

HAMILTON SUPERIOR COURTS

SECTION.

- 33-5-22-1. Courts created — Judges — Terms — Election — Qualifications.
- 33-5-22-2. Names — Courts of general jurisdiction — Seals.
- 33-5-22-3. Bailiff — Court reporter — Other personnel.
- 33-5-22-4. Place of holding court — Provision by board of county commissioners — Appropriations.
- 33-5-22-5. Jurisdiction.
- 33-5-22-6. Rules and regulations — Inciden-

SECTION.

- tal powers of judges.
- 33-5-22-7. [Repealed.]
- 33-5-22-8. Standard small claims and misdemeanor division.
- 33-5-22-9. Appointment of magistrate.
- 33-5-22-10. Transfer of actions between courts.
- 33-5-22-11. Transfer of judges between courts.
- 33-5-22-12. Jury commissioners — Jurors.

33-5-22-1. Courts created — Judges — Terms — Election — Qualifications. — (a) There are created five (5) superior courts in Hamilton County, Indiana, each consisting of one (1) judge, who shall hold office for a term of six (6) years, beginning January 1 after the election for the office is held and until a successor is elected and qualified. Every six (6) years, the voters of Hamilton County shall elect at the general election a judge for each superior court.

(b) To be eligible to hold office as judge of a superior court, a person must be:

- (1) A resident of Hamilton County;
- (2) Under seventy (70) years of age when taking office; and
- (3) Admitted to the practice of law in Indiana.

[Acts 1963, ch. 117, § 1; 1976, P.L. 133, § 13; 1979, P.L. 279, § 1; P.L.176-1988, § 3; P.L.133-1992, § 10; P.L.18-1995, § 31.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 31 provided that the amendment take effect January 1, 1997.

33-5-22-2. Names — Courts of general jurisdiction — Seals. — The superior courts shall be known as the Hamilton superior court No. 1, the Hamilton superior court No. 2, the Hamilton superior court No. 3, the Hamilton superior court No. 4, and the Hamilton superior court No. 5, and the county of Hamilton shall constitute the judicial district of each court. Each court is a court of record and general jurisdiction and shall have a seal containing the words “Hamilton Superior Court _____ (insert No. 1, No. 2, No. 3, No. 4, or No. 5) of Hamilton County, Indiana.” [Acts 1963, ch. 117, § 2; 1979, P.L. 279, § 2; P.L.176-1988, § 4; P.L.133-1992, § 11; P.L.18-1995, § 32.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 32 provided that the amendment take effect January 1, 1997.

33-5-22-3. Bailiff — Court reporter — Other personnel. — The judge of each Hamilton superior court:

- (1) Shall appoint a bailiff and an official court reporter for the court; and
- (2) May appoint other personnel necessary to facilitate and transact the business of the court;

to serve as such during the pleasure of the court, and the judge shall fix their compensation within the limits and in the manner provided by law concerning bailiffs, official court reporters, and other personnel of the court. The compensation shall be paid monthly out of the treasury of Hamilton County in the manner provided by law. [Acts 1963, ch. 117, § 3; 1979, P.L. 279, § 3; P.L.171-1984, § 32.]

Cross References. Salary of bailiff, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-22-4. Place of holding court — Provision by board of county commissioners — Appropriations. — Each Hamilton superior court shall hold its sessions in the Hamilton County courthouse, in the city of Noblesville, Indiana, or in another convenient and suitable place provided by the board of county commissioners. The board of county commissioners of Hamilton County shall provide and maintain a suitable and convenient courtroom for the holding of each court, together with a suitable and convenient jury room and offices for each judge and official court reporter. The board of county commissioners shall also provide all necessary furniture and equipment for the rooms and offices of each court, and all necessary dockets, books and records for each court. [Acts 1963, ch. 117, § 5; 1979, P.L. 279, § 4.]

33-5-22-5. Jurisdiction. — Each Hamilton superior court has concurrent jurisdiction, both original and appellate, with the Hamilton Circuit Court in Hamilton County, in all civil actions and proceedings at law and in equity, in all juvenile matters, and in all criminal and probate matters, actions and proceedings of which the Hamilton Circuit Court has jurisdiction. [Acts 1963, ch. 117, § 6; 1979, P.L. 279, § 5.]

33-5-22-6. Rules and regulations — Incidental powers of judges. — The judge of each Hamilton superior court has full power and authority to make and adopt rules and regulations for conducting the business of the court, in accordance with the laws of the state of Indiana or rules of the Supreme Court of the state of Indiana. The judge has all powers incident to a court of record in relation to the attendance of witnesses and punishment of contempt, and the power to enforce his orders. The judge of each court has the power to enforce his orders. The judge of each court has full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of records and proceedings of the court, and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1963, ch. 117, § 7; 1979, P.L. 279, § 6.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-22-7. [Repealed.]

Compiler's Notes. This section, concerning distribution of costs, was repealed by P.L.171-1984, § 80.

33-5-22-8. Standard small claims and misdemeanor division. — The Hamilton superior court No. 4 and the Hamilton superior court No. 5 have a standard small claims and misdemeanor division. [P.L.133-1992, § 12; P.L.18-1995, § 33.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 33 provided that the amendment take effect January 1, 1997.

33-5-22-9. Appointment of magistrate. — The judges of the Hamilton superior court may jointly appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judges of the superior court. [P.L.18-1995, § 34.]

33-5-22-10. Transfer of actions between courts. — The judge of the Hamilton circuit court may, with the consent of the judge of the transferee court, transfer any action or proceeding from the circuit court to the superior court. The judge of a superior court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the superior court to the circuit court. [P.L.18-1995, § 35.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 35 provided that this section take effect January 1, 1997.

33-5-22-11. Transfer of judges between courts. — The judge of the Hamilton circuit court may, with the consent of the judge of the superior court, sit as a judge of either superior court in any matter as if the judge of the circuit court were an elected judge of the superior court. The judge of either superior court may, with the consent of the judge of the circuit court, sit as judge of the circuit court in any matter as if the judge of the superior court were an elected judge of the circuit court. [P.L.18-1995, § 36.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 36 provided that this section take effect January 1, 1997.

33-5-22-12. Jury commissioners — Jurors. — (a) The clerk of the Hamilton circuit court and the jury commissioners appointed by the Hamilton circuit court shall also serve as jury commissioners for the Hamilton superior courts and shall be governed in all respects as provided by law.

(b) Jurors need not serve in the particular order in which they are drawn by the jury commissioners.

(c) Any judge of the Hamilton circuit or superior court may order the selection and summoning of other jurors for the circuit or superior court whenever necessary. Jurors shall serve all the Hamilton circuit and superior courts and shall serve any judge of the courts where juror service may be required. [P.L.18-1995, § 37.]

CHAPTER 23
HANCOCK SUPERIOR COURT

SECTION.

- 33-5-23-1. Courts established — Judges — Terms — Election.
- 33-5-23-2. Name — Jurisdiction — Seal.
- 33-5-23-3. Bailiff and court reporter.
- 33-5-23-4. Where court held — Provision by county commissioners — Appropriation by county council.
- 33-5-23-5. Concurrent jurisdiction with circuit court.
- 33-5-23-6. Rules and regulations — Incidental powers of judge.

SECTION.

- 33-5-23-7. Transfer of cases.
- 33-5-23-8. Restrictions on transfer of causes.
- 33-5-23-9. Change of venue — Filing causes received on change of venue.
- 33-5-23-10. Court of record and general jurisdiction.
- 33-5-23-11. Jury commissioners — Summoning the jury.
- 33-5-23-12. [Repealed.]
- 33-5-23-13. Standard small claims and misdemeanor division.

33-5-23-1. Courts established — Judges — Terms — Election. — There are established two (2) superior courts in and for the county of Hancock, Indiana, each of which shall consist of one (1) judge, who shall hold his office for six (6) years, beginning on January 1 after his election and until his successor is elected and qualified. Every six (6) years, the voters of Hancock County shall elect at the general election a judge for each superior court. [Acts 1965, ch. 347, § 1; 1976, P.L. 133, § 14; P.L.133-1992, § 13.]

Cross References. Admission to practice of law as qualification, IC 33-13-9-1.
Beginning and expiration of term, IC 33-13-5-1.
Vacancies in the office of judge filled by the governor, Indiana Const., art. 5, § 18.

33-5-23-2. Name — Jurisdiction — Seal. — The superior courts shall be styled “Hancock Superior Court No. 1” and “Hancock Superior Court No. 2” and the county of Hancock shall constitute the judicial district of each court. Each court shall be a court of record and general jurisdiction and shall have a seal containing the words, “Hancock Superior Court _____ (insert “No. 1” or “No. 2”) of Hancock County, Indiana.” [Acts 1965, ch. 347, § 2; P.L.133-1992, § 14.]

33-5-23-3. Bailiff and court reporter. — The judge of each court shall appoint a bailiff and an official court reporter for the court, to serve as such during the pleasure of the court. The judge shall fix their per diem or salary within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters. The same shall be paid monthly out of the treasury of Hancock County in the manner provided by law. [Acts 1965, ch. 347, § 3; P.L.171-1984, § 33; P.L.133-1992, § 15.]

Cross References. Salary of bailiff, IC 33-13-4-1.
Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-23-4. Where court held — Provision by county commissioners — Appropriation by county council. — Hancock superior court No. 1 and Hancock superior court No. 2 shall each hold sessions in the Hancock County courthouse, in the city of Greenfield, Indiana. The board of county commissioners of Hancock County shall provide and maintain in the

courthouse a suitable and convenient courtroom for the holding of each court with a suitable and convenient jury room and offices for the judge and the official court reporter and the common council shall appropriate sufficient funds therefor. [Acts 1965, ch. 347, § 5; P.L.133-1992, § 16.]

33-5-23-5. Concurrent jurisdiction with circuit court. — Hancock superior court No. 1 and Hancock superior court No. 2 have the same jurisdiction as the Hancock circuit court. [Acts 1965, ch. 347, § 6; 1978, P.L. 136, § 39; P.L.133-1992, § 17.]

NOTES TO DECISIONS

Special Prosecutor.

Hancock Superior Court had authority to appoint a special prosecutor. State ex rel.

Goldsmith v. Superior Court, 270 Ind. 487, 386 N.E.2d 942, 68 Ind. Dec. 241 (1979).

33-5-23-6. Rules and regulations — Incidental powers of judge. — The judges of Hancock superior court No. 1 and Hancock superior court No. 2 shall have full power and authority to make and adopt rules and regulations for conducting the business of Hancock superior court No. 1 and Hancock superior court No. 2 not repugnant to the laws of the state of Indiana, or rules of the supreme court of the state of Indiana and shall have all the powers incident to a court of record in relation to the attendance of witnesses, punishment of contempt, and to enforce the courts' orders. The judge of each superior court has full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds and to give all necessary certificates for the authentication of records and proceedings of the superior courts and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1965, ch. 347, § 7; P.L.133-1992, § 18.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-23-7. Transfer of cases. — Cases venued from other counties may from time to time be transferred to the Hancock Superior Court by general order of the Hancock Circuit Court, which order may be amended. [Acts 1965, ch. 347, § 8; 1969, ch. 135, § 1; 1981, P.L. 272, § 51.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-23-8. Restrictions on transfer of causes. — Notwithstanding the provisions of any statute applying generally to superior or circuit courts, a judge of the:

- (1) Hancock circuit court;
- (2) Hancock superior court No. 1; or
- (3) Hancock superior court No. 2;

may transfer an action or proceeding from the Hancock circuit court or a Hancock superior court to the Hancock circuit court or another Hancock superior court with the consent of the judge of the court that would receive the action or proceeding. [Acts 1965, ch. 347, § 9; 1981, P.L. 272, § 52; P.L.133-1992, § 19.]

33-5-23-9. Change of venue — Filing causes received on change of venue. — (a) Change of venue from the judge or from the county may be had under the same terms, conditions, and procedure applicable to changes of venue from the judge or the county in circuit courts.

(b) If a cause be received by the clerk of the Hancock circuit court on change of venue from another county, the same may be docketed in either the Hancock circuit court, Hancock superior court No. 1, or Hancock superior court No. 2, under rules adopted by the judges of the Hancock circuit court, Hancock superior court No. 1, and Hancock superior court No. 2, unless otherwise provided in the order, report of striking, or entry made in the cause in the county from which the change of venue was taken, in which case it shall be docketed as provided in the entry, report, or order. [Acts 1965, ch. 347, § 10; P.L.167-1984, § 51; P.L.133-1992, § 20.]

Cross References. Change from county, Change of judge, venue, grounds for, IC
venue, procedure, costs, IC 34-35-1-2. 34-35-1-1, Rule TR. 76.

33-5-23-10. Court of record and general jurisdiction. — Each superior court shall be a court of record and of general jurisdiction at law and equity, and its judgments, decrees, orders, and proceedings shall have the same force and effect as to causes, proceedings, and matters within its jurisdiction as those of the circuit court and shall be enforced in the same manner. [Acts 1965, ch. 347, § 11; P.L.133-1992, § 21.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-23-11. Jury commissioners — Summoning the jury. — Each superior court shall, during the last term of court in each calendar year, appoint for the next calendar year two (2) persons who are residents of Hancock County as jury commissioners, and the law with reference to jury commissioners appointed by the circuit court, as it now exists or as may hereafter be enacted, shall fully govern the jury commissioners as appointed by each superior court in all things, conditions, and qualifications, and the jury commissioners shall prepare and draw the petit jury for each superior court as the law directs the same to be done by the jury commissioners for the circuit court, and each superior court shall be governed by the law in the making of appointments of the jury commissioners, and the clerk in issuing process for the jury and the sheriff in serving the same shall in all things be governed by the law made for petit jurors in the circuit court. Each superior court may order on what day of the term the jurors shall be summoned to attend court and the judge of each court may order the selection and

summoning of other jurors for the court whenever the same may be necessary. [Acts 1965, ch. 347, § 12; P.L.133-1992, § 22.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Jury commissioners, IC 33-4-5-1 — IC 33-4-5-9.

Jury fee, per diem and mileage, IC 33-19-1-4.

Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

33-5-23-12. [Repealed.]

Compiler's Notes. This section, concerning the lack of authority to impanel a grand jury, was repealed by P.L.167-1984, § 92.

33-5-23-13. Standard small claims and misdemeanor division. — Hancock superior court No. 2 has a standard small claims and misdemeanor division. [P.L.133-1992, § 23.]

CHAPTER 24

JOHNSON SUPERIOR COURTS

SECTION.

33-5-24-1. Courts created — Judges — Terms — Elections.

33-5-24-2. Names of courts.

33-5-24-3. Bailiffs and court reporters.

33-5-24-4. Places for holding court sessions — Provision by board of commissioners.

33-5-24-5. Jurisdiction.

33-5-24-6. Rules and regulations — Incidental powers of judges.

33-5-24-7. Jury commissioners — Jury selection — Grand jury.

33-5-24-8. [Repealed.]

SECTION.

33-5-24-9. Transfer of proceedings between circuit and superior courts.

33-5-24-10. Circuit court judge sitting as superior court judge — Superior court judge sitting as circuit court judge — Superior court judge sitting in another superior court.

33-5-24-11, 33-5-24-12. [Repealed.]

33-5-24-13. Standard small claims and misdemeanor division.

33-5-24-14. Magistrate.

33-5-24-1. Courts created — Judges — Terms — Elections. — (a) There are established three (3) superior courts in and for the county of Johnson, Indiana, each of which shall consist of one (1) judge, who shall hold the judge's office for a term of six (6) years, beginning on the first day of January after the judge's election, and until the judge's successor is elected and qualified. Every six (6) years, the voters of Johnson County shall elect at the general election a judge for each superior court.

(b) To be eligible to hold office as a judge of a superior court, a person must be:

(1) A resident of Johnson County;

(2) Under the age of seventy (70) years at the time the judge takes office; and

(3) Admitted to the bar of Indiana.

[Acts 1959, ch. 37, § 1; 1976, P.L. 133, § 15; P.L.303-1983, § 1; P.L.18-1995, § 38.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 38 provided that the amendment take effect January 1, 1997.

33-5-24-2. Names of courts. — The superior courts shall be known as Johnson superior court No. 1, Johnson superior court No. 2, and Johnson superior court No. 3, and the county of Johnson shall constitute the judicial district of each court. Each court shall be a court of record and general jurisdiction, and shall have a seal containing the words “Johnson Superior Court (insert “No. 1,” “No. 2,” or “No. 3”) of Johnson County, Indiana”. [Acts 1959, ch. 37, § 2; 1981, P.L. 272, § 54; P.L.303-1983, § 2; P.L.18-1995, § 39.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 39 provided that the amendment take effect January 1, 1997.

33-5-24-3. Bailiffs and court reporters. — The judge of each Johnson superior court shall appoint a bailiff and an official court reporter for his court, to serve during the pleasure of the court. Each judge shall fix their per diem or salary within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters. The per diem or salary shall be paid monthly out of the treasury of Johnson County in the manner provided by law. [Acts 1959, ch. 37, § 3; P.L.303-1983, § 3; P.L.171-1984, § 34.]

Cross References. Salary of bailiff, IC 33-13-4-1.	Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.
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33-5-24-4. Places for holding court sessions — Provision by board of commissioners. — (a) The Johnson superior court No. 1 and Johnson superior court No. 2 shall hold sessions in the Johnson County courthouse, in the city of Franklin, Indiana. The Johnson superior court No. 3 shall hold its sessions in a place to be determined and provided by the board of county commissioners of Johnson County, Indiana.

(b) The board of county commissioners of Johnson County shall provide and maintain a suitable and convenient courtroom for each court, together with a suitable and convenient jury room and offices for the presiding judge and official court reporter. The board of county commissioners shall also provide all necessary furniture and equipment for the rooms and offices of each court and all necessary dockets, books, and records for each court. [Acts 1959, ch. 37, § 5; P.L.303-1983, § 4; P.L.18-1995, § 40.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 40 provided that the amendment take effect January 1, 1997.

33-5-24-5. Jurisdiction. — Except as provided in section 11 [IC 33-5-24-11, repealed] of this chapter, each Johnson superior court shall have concurrent jurisdiction, both original and appellate, with the Johnson Circuit Court in Johnson County, in all civil actions and proceedings at law

and in equity, and in all criminal and probate matters, actions and proceedings of which the Johnson Circuit Court has jurisdiction. [Acts 1959, ch. 37, § 6; P.L.303-1983, § 5.]

Compiler's Notes. Section 11 of this chapter (IC 33-5-24-11) was repealed by P.L.167-1984, § 92.

NOTES TO DECISIONS

Indictment.

An indictment was not invalid because returned by a grand jury drawn for service in the circuit court but called by the superior

court and returning the indictment in the superior court. *Thompson v. State*, 256 Ind. 48, 267 N.E.2d 49, 24 Ind. Dec. 598 (1971).

33-5-24-6. Rules and regulations — Incidental powers of judges. —

The judge of each Johnson superior court shall have full power and authority to make and adopt rules and regulations for conducting the business of his court, not repugnant to the laws of the state of Indiana or rules of the Supreme Court of the state of Indiana. Each judge has all powers incident to a court of record in relation to the attendance of witnesses and punishment of contempt, and the power to enforce his orders. Each judge has full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court, and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1959, ch. 37, § 7; P.L.303-1983, § 6.]

33-5-24-7. Jury commissioners — Jury selection — Grand jury. —

The jury commissioners appointed by the judge of the Johnson Circuit Court shall serve as the jury commissioners for the Johnson superior courts. Juries for the superior courts shall be selected in the same manner as juries for the Johnson Circuit Court. The grand jury selected for the Johnson Circuit Court shall also serve as the grand jury for the superior courts as may be necessary. [IC 33-5-24-7, as added by P.L.303-1983, § 7.]

33-5-24-8. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed

by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-24-9. Transfer of proceedings between circuit and superior courts. — The judge of the Johnson Circuit Court may, with the consent of the judge of the transferee court, transfer any action or proceeding from the circuit court to a superior court. The judge of a superior court may, with the consent of the judge of the circuit court or another superior court, transfer any action or proceeding from the superior court to the circuit court or to the other superior court. [IC 33-5-24-9, as added by P.L.303-1983, § 9; P.L.18-1995, § 41.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 41 provided that the amendment take effect January 1, 1997.

33-5-24-10. Circuit court judge sitting as superior court judge — Superior court judge sitting as circuit court judge — Superior court judge sitting in another superior court. — (a) The judge of the Johnson circuit court may, with the consent of the judge of a superior court, sit as a judge of the superior court in any matter as if the judge of the Johnson circuit court were an elected judge of the superior court.

(b) The judge of a superior court may, with the consent of the judge of the circuit court, sit as judge of the circuit court in any matter as if the judge of the superior court were an elected judge of the circuit court.

(c) The judge of a superior court may, with the consent of the judge of another superior court, sit as the judge of the other superior court in any matter as if the judge of the superior court were an elected judge of the other superior court. [IC 33-5-24-10, as added by P.L.303-1983, § 10; P.L.18-1995, § 42.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 42 provided that the amendment take effect January 1, 1997.

33-5-24-11, 33-5-24-12. [Repealed.]

Compiler's Notes. These sections, concerning small claims and misdemeanor dockets of Johnson Superior Court No. 2 and taxing and disbursement of costs, were

amended in 1984 by P.L.171-1984, § 35 and repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-24-13. Standard small claims and misdemeanor division. — The Johnson superior court has a standard small claims and misdemeanor division. [P.L.167-1984, § 52; P.L.18-1995, § 43.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 43 provided that the amendment take effect January 1, 1997.

33-5-24-14. Magistrate. — (a) The judges of the Johnson circuit and superior courts may jointly appoint one (1) full-time magistrate to serve both the circuit and superior courts.

(b) The magistrate continues in office until removed by the judges of the Johnson circuit and superior courts. [P.L.40-1990, § 29.]

CHAPTER 25

HENDRICKS SUPERIOR COURTS

SECTION.

33-5-25-1. Courts established — Judges — Terms — Elections — Qualifications.

33-5-25-2. Names of courts — Court of record and general jurisdiction — Seals.

SECTION.

33-5-25-3. Bailiffs and court reporters.

33-5-25-4. Place of holding court — Provision by board of commissioners — Appropriations.

33-5-25-5. Jurisdiction.

33-5-25-6, 33-5-25-6.1. [Repealed.]

SECTION.

- 33-5-25-7. Transfer of actions.
 33-5-25-8. Lack of jurisdiction, action not abated — Transfer — Costs — Transcript.
 33-5-25-9. Change of venue — Judge — County.
 33-5-25-10. Effect and enforcement of superior court judgments.
 33-5-25-11. Power and authority of judges — Rules and regulations of court.

SECTION.

- 33-5-25-12. Powers of court — Process.
 33-5-25-13. [Repealed.]
 33-5-25-14. Jury commissioners — Duties — Petit jury.
 33-5-25-15. [Repealed.]
 33-5-25-16. Records and papers.
 33-5-25-17. [Repealed.]
 33-5-25-17.1. Grand jury.
 33-5-25-18. Standard small claims and misdemeanor division.

33-5-25-1. Courts established — Judges — Terms — Elections — Qualifications. — (a) There are established three (3) superior courts in and for the county of Hendricks, Indiana, each of which shall consist of one (1) judge, who shall hold his office for a term of six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified. Every six (6) years, the voters of Hendricks County shall elect at the general election a judge for each superior court.

(b) To be eligible to hold office as a judge of either court, a person must be:

- (1) A resident of Hendricks County;
- (2) Under the age of seventy (70) years at the time he takes office; and
- (3) Admitted to the bar of Indiana.

[Acts 1963, ch. 247, § 1; 1976, P.L. 133, § 16; 1978, P.L. 141, § 10; P.L.133-1992, § 24; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-

1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

33-5-25-2. Names of courts — Court of record and general jurisdiction — Seals. — The superior courts shall be known as Hendricks superior court No. 1, Hendricks superior court No. 2, and Hendricks superior court No. 3, and the county of Hendricks shall constitute the judicial district of each court. Each court shall be a court of record of general jurisdiction and shall have a seal containing the words "Hendricks Superior Court _____ (insert "No. 1", "No. 2", or "No. 3") of Hendricks County, Indiana." [Acts 1963, ch. 247, § 2; 1978, P.L. 141, § 11; P.L.133-1992, § 25; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-

1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

33-5-25-3. Bailiffs and court reporters. — The judge of each Hendricks superior court shall appoint a bailiff and an official court reporter for his court, to serve as such during the pleasure of the court. Each judge shall fix their compensation within the limits and in the manner as may be provided by law concerning the bailiff and official court reporter of Hendricks Circuit Court. The compensation shall be paid monthly out of the

treasury of Hendricks County in the manner provided by law. [Acts 1963, ch. 247, § 3; 1978, P.L. 141, § 12; P.L.171-1984, § 36.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-25-4. Place of holding court — Provision by board of commissioners — Appropriations. — Each Hendricks superior court shall hold its sessions in the Hendricks County courthouse in the town of Danville, Indiana; and the board of county commissioners of Hendricks County shall provide and maintain in said courthouse a suitable and convenient courtroom for the holding of each court, with a suitable and convenient jury room and offices for the judge and the official court reporter, and the common council shall appropriate sufficient funds therefor. [Acts 1963, ch. 247, § 5; 1978, P.L. 141, § 13.]

33-5-25-5. Jurisdiction. — (a) The Hendricks superior court No. 1 has original, exclusive jurisdiction in all matters pertaining to the probate of wills, the appointment of guardians, executors, administrators, personal representatives, and trustees, and to the administration and settlement of estates of protected persons (as defined in IC 29-3-1-13) and deceased persons, and of trusts, adoptions, and surviving partnerships, and in all probate and other matters provided for by IC 29, except its jurisdiction is not exclusive to civil actions by or against personal representatives, but is concurrent with the Hendricks circuit court, Hendricks superior court No. 2, and Hendricks superior court No. 3.

(b) Except as provided in subsection (a), each superior court in the county has original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity, and actions for dissolution or annulment of marriage, and in all criminal cases and proceedings, but neither superior court has the jurisdiction of a juvenile court.

(c) Each superior court in the county has original and concurrent jurisdiction with the circuit court in all appeals or reviews from boards of county commissioners or other executive or administrative agencies and all other appellate jurisdiction vested in the circuit court. [Acts 1963, ch. 247, § 6; 1978, P.L. 141, § 14; P.L.33-1989, § 109; P.L.133-1992, § 26; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.
Cited: D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind. App. 1982).

NOTES TO DECISIONS

ANALYSIS	Concurrent Jurisdiction.
Concurrent jurisdiction.	—Circuit Court.
—Circuit court.	The Hendricks Circuit Court and
Divorce action.	Hendricks Superior Courts one and two all

Concurrent Jurisdiction. (Cont'd)**—Circuit Court.** (Cont'd)

have concurrent jurisdiction over Class D felonies and misdemeanors. State ex rel. Adams v. Hendricks Circuit Court, 497 N.E.2d 546 (Ind. 1986).

Divorce Action.

Hendricks Superior Court had jurisdiction of divorce action where no issue of paternity was raised in the proceedings. Toller v. Toller, 176 Ind. App. 322, 375 N.E.2d 263, 62 Ind. Dec. 297 (1978).

33-5-25-6, 33-5-25-6.1. [Repealed.]

Compiler's Notes. These sections, concerning the transfer of actions from Hendricks Circuit Court, changes of venue, and small claims and misdemeanor jurisdic-

tion of Hendricks Superior Court No. 2, were repealed by Acts 1978, P.L. 141, § 2 and P.L.167-1984, § 92. For present law, see IC 33-5-25-7 — IC 33-5-25-9.

33-5-25-7. Transfer of actions. — An action, cause, case, proceeding, or matter filed in the Hendricks circuit court or a superior court established by this chapter may be transferred by the court in which it is filed to either of the other courts by transferring all original papers filed, without further transcript thereof, with the consent of the court to which it is transferred. [Acts 1963, ch. 247, § 8; 1978, P.L. 141, § 16; 1979, P.L. 31, § 14; P.L.133-1992, § 27; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-

1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

33-5-25-8. Lack of jurisdiction, action not abated — Transfer — Costs — Transcript. — (a) Whenever it shall appear that a superior court has no jurisdiction of any action or proceeding filed therein or it shall appear that the Hendricks circuit court has no jurisdiction of any action or proceeding filed therein but that because of this chapter the jurisdiction is in one (1) of the other courts, such action or proceeding shall not abate but such court in which the same was filed shall, without further proceedings, certify said cause and the papers therein to the court having jurisdiction where the same shall stand for further proceedings and trial as if originally filed therein, and the costs therein shall abide the result of said cause or proceedings as if the same had been commenced in the court to which transferred. Such transfer shall be made by order entered on the order book of the court transferring such action or proceeding and shall be docketed in the court to which transferred without a transcript.

(b) If any action, cause, case, proceeding, or matter transferred under this section shall be taken on change of venue to the court of another county or if such cause be appealed to the court of appeals or supreme court of Indiana from any order, ruling, judgment, or decree therein made, then the clerk on request or praecipe of the party taking such change of venue or appeal shall make a transcript of the proceedings in each court, certify to the same, and such transcript shall have the same force and effect and give to the court to which it is taken on change of venue or appeal the same jurisdiction as though such transcript originally had been made when such actions, causes, cases, proceedings, and matters were transferred from one (1) court to the

other. [Acts 1963, ch. 247, § 9; 1978, P.L. 141, § 17; P.L.133-1992, § 28; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-

1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

33-5-25-9. Change of venue — Judge — County. — (a) Change of venue from the judge or from the county may be had under the same terms, conditions, and procedure applicable to changes of venue from the judge or the county in circuit courts.

(b) If a cause is received by the clerk of the Hendricks circuit court on change of venue from another county, the same shall be docketed on a rotating basis and assigned alternately to the Hendricks circuit court, Hendricks superior court No. 1, Hendricks superior court No. 2, and Hendricks superior court No. 3 unless otherwise provided in the order or entry made in such cause in the county from which such change of venue was taken, in which case it shall be docketed as provided in such entry or order. [Acts 1963, ch. 247, § 10; P.L.167-1984, § 53; P.L.133-1992, § 29; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

Cross References. Change from county, venue, procedure, costs, IC 34-1-13-2.

Change of judge, venue, grounds for, IC 34-1-13-1, Rule TR. 76.

33-5-25-10. Effect and enforcement of superior court judgments. — The judgments, decrees, orders, and proceedings of each superior court shall have the same force and effect as to causes, proceedings, and matters within its jurisdiction as those of the circuit court and shall be enforced in the same manner. [Acts 1963, ch. 247, § 11; 1978, P.L. 141, § 18.]

33-5-25-11. Power and authority of judges — Rules and regulations of court. — (a) The judge of each superior court shall have the same power to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus, and of mandate and prohibition, to appoint receivers, master commissioners, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers and employees necessary to facilitate and transact the business of said court, as is conferred on circuit courts or the judges thereof.

(b) The judge of each superior court shall have full power and authority to make and adopt rules and regulations for continuing business of the court, not repugnant to the laws of the state of Indiana or the rules of the Supreme Court of the state of Indiana. Each judge shall have all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt, and the power to enforce his orders. Each judge shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of his court, and to make and execute certificates of qualification and moral character of persons petition-

ing to be commissioned as notaries public. [Acts 1963, ch. 247, § 12; 1978, P.L. 141, § 19.]

33-5-25-12. Powers of court — Process. — (a) Each superior court shall have the power to issue and direct all process to corporations and individuals which shall be necessary in exercising the jurisdiction conferred and for the regular execution of this law, and to make all proper judgments, sentences, decrees, orders, and injunctions, and to issue all process and executions, and to do all such other acts as may be necessary to carry into effect the same in conformity with the laws of this state.

(b) The process of each superior court shall have the seal affixed, be attested, directed, served, returned, and be in form as is provided for process issuing from the circuit court. [Acts 1963, ch. 247, § 13; 1978, P.L. 141, § 20.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-25-13. [Repealed.]

Compiler's Notes. This section, concerning the applicability of supreme court rules, was repealed by Acts 1978, P.L. 141, § 26. For present law, see IC 34-8-1, IC 34-8-2-1.

33-5-25-14. Jury commissioners — Duties — Petit jury. — The jury commissioners appointed by the circuit court shall serve as the jury commissioners for each superior court in all things, conditions, and qualifications, and said jury commissioners shall prepare and draw the petit jury for each superior court as the law directs the same to be done for the circuit court. The judge of each court may order the selection and summoning of other jurors for his court whenever the same may be necessary, and if at any time a jury shall for any reason be not drawn, then the clerk shall select from among the properly qualified residents of such county a jury, who shall be summoned and considered in all things as the regular panel of the court. [Acts 1963, ch. 247, § 15; 1978, P.L. 141, § 21.]

Cross References. Appointment of jury commissioners in circuit court, IC 33-4-5-1. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

33-5-25-15. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-25-16. Records and papers. — The clerk, under the direction of each judge, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for each superior court, and all books, papers, and proceedings of each court

shall be kept distinct and separate from those of all other courts. [Acts 1963, ch. 247, § 17; 1978, P.L. 141, § 23.]

33-5-25-17. [Repealed.]

Compiler’s Notes. This section, concerning grand jury, was repealed by Acts 1979,

P.L. 31, § 18. For present law, see IC 33-5-25-17.1.

33-5-25-17.1. Grand jury. — The judge of each superior court shall not have authority to make an order requiring the clerk to issue a venire for a grand jury or to impanel a grand jury, but the grand jury impanelled by the judge of the Hendricks Circuit Court shall also act as the grand jury for each superior court, and such grand jury may return an indictment into the Hendricks Circuit Court or into a superior court as indictments are returned to the circuit court. [IC 33-5-25-17.1, as added by Acts 1979, P.L. 31, § 15.]

33-5-25-18. Standard small claims and misdemeanor division. — The Hendricks superior court No. 2 and the Hendricks superior court No. 3 each have a standard small claims and misdemeanor division. [P.L.167-1984, § 54; P.L.133-1992, § 30; P.L.173-1994, § 2.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994. P.L.173-1994, § 2, changed the effective date of the 1992 amendments to January 1, 1995.

Cited: State ex rel. Adams v. Hendricks Circuit Court, 497 N.E.2d 546 (Ind. 1986).

CHAPTER 25.3

HUNTINGTON SUPERIOR COURT

SECTION.	SECTION.
33-5-25.3-1. Court established — Seal — Jurisdiction.	33-5-25.3-7. Sessions — Rooms and facilities — Funds for maintenance.
33-5-25.3-2. Judge — Election — Term — Eligibility.	33-5-25.3-8. Jury commissioners.
33-5-25.3-3. Concurrent jurisdiction with circuit court.	33-5-25.3-9. Transfer of actions or proceedings.
33-5-25.3-4. Power of judge concurrent with circuit court power.	33-5-25.3-10. Authority of circuit and superior court judges to sit in either court.
33-5-25.3-5. Bailiff and court reporter — Salaries.	33-5-25.3-11. Standard small claims and misdemeanor division.
33-5-25.3-6. Books.	

33-5-25.3-1. Court established — Seal — Jurisdiction. — There is established a court of record to be known as the Huntington superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Huntington Superior Court, Huntington County, Indiana.” Huntington County comprises the judicial district of the court. [P.L.176-1988, § 5.]

33-5-25.3-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Huntington County. The judge’s term begins January 1 following

the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Huntington County;
- (2) Be less than seventy (70) years of age at the time of taking office; and
- (3) Be admitted to the practice of law in Indiana.

[P.L.176-1988, § 5.]

33-5-25.3-3. Concurrent jurisdiction with circuit court. — The court has the same jurisdiction as the Huntington circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.176-1988, § 5.]

33-5-25.3-4. Power of judge concurrent with circuit court power. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Huntington circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.176-1988, § 5.]

33-5-25.3-5. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Huntington circuit court. Their salaries shall be paid monthly out of the treasury of Huntington County as provided by law. [P.L.176-1988, § 5.]

33-5-25.3-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.176-1988, § 5.]

33-5-25.3-7. Sessions — Rooms and facilities — Funds for maintenance. — The court shall hold its sessions in the Huntington County courthouse in Huntington, Indiana, or in such other places in the county as the Huntington County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Huntington County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.176-1988, § 5.]

33-5-25.3-8. Jury commissioners. — The jury commissioners appointed by the judge of the Huntington circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Huntington circuit court. The grand jury selected for the Huntington circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.176-1988, § 5.]

33-5-25.3-9. Transfer of actions or proceedings. — The judge of the Huntington circuit court may, with the consent of the judge of the court,

transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.176-1988, § 5.]

33-5-25.3-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Huntington circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.176-1988, § 5.]

33-5-25.3-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.176-1988, § 5.]

CHAPTER 25.4
JACKSON SUPERIOR COURT

SECTION.	SECTION.
33-5-25.4-1. Court created — Seal.	33-5-25.4-9. Transfer of actions or proceedings.
33-5-25.4-2. Judge.	
33-5-25.4-3. Jurisdiction.	33-5-25.4-10. Authority of circuit and superior court judges to sit in either court.
33-5-25.4-4. Powers of judge.	
33-5-25.4-5. Bailiff and court reporter.	33-5-25.4-11. Standard small claims and misdemeanor division.
33-5-25.4-6. Books.	
33-5-25.4-7. Sessions — Rooms and facilities.	
33-5-25.4-8. Jury commissioners.	

33-5-25.4-1. Court created — Seal. — There is established a court of record to be known as the Jackson superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Jackson Superior Court, Jackson County, Indiana”. Jackson County comprises the judicial district of the court. [P.L.392-1987(ss), § 4.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-25.4-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Jackson County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as judge of the court, a person must:
- (1) Be a resident of Jackson County;
 - (2) Be less than seventy (70) years of age at the time of taking office; and
 - (3) Be admitted to the practice of law in Indiana.

[P.L.392-1987(ss), § 4.]

33-5-25.4-3. Jurisdiction. — The court has the same jurisdiction as the Jackson circuit court. [P.L.392-1987(ss), § 4.]

33-5-25.4-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Jackson circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.392-1987(ss), § 4.]

33-5-25.4-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Jackson circuit court. Their salaries shall be paid monthly out of the treasury of Jackson County as provided by law. [P.L.392-1987(ss), § 4.]

33-5-25.4-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.392-1987(ss), § 4.]

33-5-25.4-7. Sessions — Rooms and facilities. — The court shall hold its sessions in Seymour. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Jackson County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.392-1987(ss), § 4.]

33-5-25.4-8. Jury commissioners. — The jury commissioners appointed by the judge of the Jackson circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Jackson circuit court. The grand jury selected for the Jackson circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.392-1987(ss), § 4.]

33-5-25.4-9. Transfer of actions or proceedings. — The judge of the Jackson circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.392-1987(ss), § 4.]

33-5-25.4-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Jackson circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.392-1987(ss), § 4.]

33-5-25.4-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.392-1987(ss), § 4.]

CHAPTER 25.5

JASPER SUPERIOR COURT

SECTION.

- 33-5-25.5-1. Courts established — Seals.
- 33-5-25.5-2. Election and terms of judges.
- 33-5-25.5-3. Jurisdiction.
- 33-5-25.5-4. Powers of judges.
- 33-5-25.5-5 — 33-5-25.5-9. [Repealed.]
- 33-5-25.5-10. Court books.
- 33-5-25.5-11. Locations of court sessions.
- 33-5-25.5-12. Jury commissioners — Grand jury.

SECTION.

- 33-5-25.5-13. [Repealed.]
- 33-5-25.5-14. Transfer of actions.
- 33-5-25.5-15. Authority of circuit and superior court judges to sit in either court.
- 33-5-25.5-16. Standard small claims and misdemeanor division.
- 33-5-25.5-17. Adoption of rules.
- 33-5-25.5-18. Administrative personnel.

33-5-25.5-1. Courts established — Seals. — There is established a court of record to be known as Jasper superior court No. 1. The court may have a seal containing the words “Jasper Superior Court No. 1, Jasper County, Indiana”. Jasper County comprises the judicial district of the court. [IC 33-5-25.5-1, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 30; P.L.18-1995, § 44.]

33-5-25.5-2. Election and terms of judges. — The Jasper superior court has one (1) judge, who shall be elected at the general election every six (6) years in Jasper County. His term begins January 1 following his election and ends December 31 following the election of his successor. [IC 33-5-25.5-2, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 31; P.L.18-1995, § 45.]

33-5-25.5-3. Jurisdiction. — The Jasper superior court has the same jurisdiction as the Jasper circuit court, except that only the circuit court has juvenile jurisdiction. [IC 33-5-25.5-3, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 32; P.L.18-1995, § 46.]

33-5-25.5-4. Powers of judges. — The judge of the Jasper superior court has the same powers relating to the conduct of the business of the judge’s court as the judge of the Jasper circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-25.5-4, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 33; P.L.18-1995, § 47.]

33-5-25.5-5 — 33-5-25.5-9. [Repealed.]

Compiler’s Notes. These sections, concerning salary of judge, dockets of small claims and misdemeanor division, taxation and distribution of costs, clerk and sheriff and

their duties, and transfer of actions or proceedings, were repealed by P.L.167-1984, § 92, P.L.171-1984, § 80, and P.L.40-1990, § 57.

33-5-25.5-10. Court books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-25.5-10, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 34; P.L.18-1995, § 48.]

33-5-25.5-11. Locations of court sessions. — The court shall hold sessions in the Jasper County courthouse in Rensselaer, Indiana, or in such other places in the county as the board of county commissioners of Jasper County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Jasper County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-25.5-11, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 35; P.L.18-1995, § 49.]

33-5-25.5-12. Jury commissioners — Grand jury. — The jury commissioners appointed by the judge of the Jasper circuit court shall serve as the jury commissioners for the Jasper superior court. Juries shall be selected in the same manner as juries for the Jasper circuit court. The grand jury selected for the Jasper circuit court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-25.5-12, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 36; P.L.18-1995, § 50.]

33-5-25.5-13. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-25.5-14. Transfer of actions. — The judge of the Jasper circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-25.5-14, as deposited by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 37; P.L.18-1995, § 51.]

33-5-25.5-15. Authority of circuit and superior court judges to sit in either court. — The judge of the Jasper circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was the elected judge of the circuit court. [IC 33-5-25.5-15, as added by Acts 1981, P.L. 277, § 1; P.L.40-1990, § 38; P.L.18-1995, § 52.]

33-5-25.5-16. Standard small claims and misdemeanor division. — The Jasper superior court has a standard small claims and misdemeanor division. [P.L.167-1984, § 55; P.L.40-1990, § 39; P.L.18-1995, § 53.]

33-5-25.5-17. Adoption of rules. — (a) The judge of Jasper superior court No. 1 shall adopt rules to provide for the administration of the Jasper superior court, including rules governing the following:

- (1) Legal representation for indigents.
- (2) Budgetary matters of the Jasper superior court.
- (3) Operation of the probation department.

- (4) Employment and management of court personnel.
- (5) Cooperative efforts with other courts for establishing and administering shared programs and facilities.

(b) The judge of the Jasper superior court shall file with the division of state court administration a copy of the rules adopted under this section. [P.L.40-1990, § 40; P.L.18-1995, § 54.]

33-5-25.5-18. Administrative personnel. — (a) The judge of the court may, subject to the budget approved for the court by the fiscal body of Jasper County, employ personnel necessary for the proper administration of the court.

- (b) Personnel employed under this section:
- (1) Include court reporters, bailiffs, clerical staff, and any additional officers necessary for the proper administration of the court; and
 - (2) Are subject to the rules concerning employment and management of court personnel adopted by the court under section 17 [IC 33-5-25.5-17] of this chapter. [P.L.40-1990, § 41; P.L.18-1995, § 55.]

CHAPTER 25.7

JAY SUPERIOR COURT

SECTION.	SECTION.
33-5-25.7-1. Court created — Seal.	33-5-25.7-9. Transfer of actions or proceedings.
33-5-25.7-2. Judge.	33-5-25.7-10. Authority of circuit and superior court judges to sit in either court.
33-5-25.7-3. Jurisdiction.	33-5-25.7-11. Standard small claims and misdemeanor division.
33-5-25.7-4. Powers of judge.	
33-5-25.7-5. Bailiff and court reporter.	
33-5-25.7-6. Books.	
33-5-25.7-7. Sessions — Rooms and facilities.	
33-5-25.7-8. Jury commissioners.	

33-5-25.7-1. Court created — Seal. — There is established a court of record to be known as the Jay superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Jay Superior Court, Jay County, Indiana”. Jay County comprises the judicial district of the court. [P.L.392-1987(ss), § 5.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-25.7-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Jay County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as judge of the court, a person must:
- (1) Be a resident of Jay County;
 - (2) Be less than seventy (70) years of age at the time of taking office; and
 - (3) Be admitted to the practice of law in Indiana.

[P.L.392-1987(ss), § 5.]

33-5-25.7-3. Jurisdiction. — The court has the same jurisdiction as the Jay circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.392-1987(ss), § 5.]

33-5-25.7-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Jay circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.392-1987(ss), § 5.]

33-5-25.7-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Jay circuit court. Their salaries shall be paid monthly out of the treasury of Jay County as provided by law. [P.L.392-1987(ss), § 5.]

33-5-25.7-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.392-1987(ss), § 5.]

33-5-25.7-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Jay County courthouse in Portland, Indiana, or in such other places in the county as the Jay County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Jay County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.392-1987(ss), § 5.]

33-5-25.7-8. Jury commissioners. — The jury commissioners appointed by the judge of the Jay circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Jay circuit court. The grand jury selected for the Jay circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.392-1987(ss), § 5.]

33-5-25.7-9. Transfer of actions or proceedings. — The judge of the Jay circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.392-1987(ss), § 5.]

33-5-25.7-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Jay circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the

judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.392-1987(ss), § 5.]

33-5-25.7-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.392-1987(ss), § 5.]

CHAPTER 25.8

JEFFERSON SUPERIOR COURT

SECTION.

- 33-5-25.8-1. Establishment of court — Seal.
- 33-5-25.8-2. Judge — Election, term, and qualifications.
- 33-5-25.8-3. Jurisdiction.
- 33-5-25.8-4. Powers of judge.
- 33-5-25.8-5. Bailiff — Official court reporter.
- 33-5-25.8-6. Record books.
- 33-5-25.8-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-25.8-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-25.8-9. Transfer of actions.
- 33-5-25.8-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-25.8-11. Standard small claims and misdemeanor division.

33-5-25.8-1. Establishment of court — Seal. — There is established a court of record to be known as the Jefferson superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Jefferson Superior Court, Jefferson County, Indiana.” Jefferson County comprises the judicial district of the court. [P.L.133-1992, § 31.]

33-5-25.8-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Jefferson County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as judge of the court, a person must be:
- (1) A resident of Jefferson County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 31.]

33-5-25.8-3. Jurisdiction. — The court is a court of record and general jurisdiction. [P.L.133-1992, § 31.]

33-5-25.8-4. Powers of judge. — (a) The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Jefferson and Switzerland circuit court.

- (b) The judge of the court may do the following:
- (1) Administer oaths.
 - (2) Solemnize marriages.
 - (3) Take and certify acknowledgments of deeds.

[P.L.133-1992, § 31.]

33-5-25.8-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Jefferson and Switzerland circuit court; and
- (2) Paid monthly out of the treasury of Jefferson County as provided by law. [P.L.133-1992, § 31.]

33-5-25.8-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 31.]

33-5-25.8-7. Location of sessions — Rooms and facilities provided. — (a) The court shall hold the court's sessions in Madison.

(b) The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Jefferson County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 31.]

33-5-25.8-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Jefferson and Switzerland circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Jefferson and Switzerland circuit court.

(b) The grand jury selected for the Jefferson and Switzerland circuit court shall also serve as the grand jury for the court as is necessary. [P.L.133-1992, § 31.]

33-5-25.8-9. Transfer of actions. — (a) The judge of the Jefferson and Switzerland circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court if the action could have been originally filed with the court.

(b) The judge of the court may, with the consent of the judge of the Jefferson and Switzerland circuit court, transfer any action or proceeding from the court to the Jefferson and Switzerland circuit court. [P.L.133-1992, § 31.]

33-5-25.8-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the Jefferson and Switzerland circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Jefferson and Switzerland circuit court, sit as a judge of the Jefferson and Switzerland circuit court in any matter as if an elected judge of the Jefferson and Switzerland circuit court. [P.L.133-1992, § 31.]

33-5-25.8-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 31.]

CHAPTER 25.9

JENNINGS SUPERIOR COURT

SECTION.	SECTION.
33-5-25.9-1. Jennings superior court established.	33-5-25.9-8. Jury commissioners — Jury selection — Grand juries.
33-5-25.9-2. Election of judge — Term of office — Eligibility.	33-5-25.9-9. Transfer of actions between courts.
33-5-25.9-3. Jurisdiction of court.	33-5-25.9-10. Movement of judges between courts.
33-5-25.9-4. Powers of judge.	33-5-25.9-11. Small claims and misdemeanor division.
33-5-25.9-5. Appointment of bailiff and court reporter — Salaries.	
33-5-25.9-6. Court record books.	
33-5-25.9-7. Courtrooms and facilities — Funds for maintenance.	

33-5-25.9-1. Jennings superior court established. — There is established a court of record to be known as the Jennings superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Jennings Superior Court, Jennings County, Indiana”. Jennings County comprises the judicial district of the court. [P.L.18-1995, § 56.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 56 provided that this chapter take effect January 1, 1997.

33-5-25.9-2. Election of judge — Term of office — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Jennings County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must be:

- (1) A resident of Jennings County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.18-1995, § 56.]

33-5-25.9-3. Jurisdiction of court. — The court has the same jurisdiction as the Jennings circuit court. [P.L.18-1995, § 56.]

33-5-25.9-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Jennings circuit court. The judge of the court may administer oaths,

solemnize marriages, and take and certify acknowledgments of deeds. [P.L.18-1995, § 56.]

33-5-25.9-5. Appointment of bailiff and court reporter — Salaries.

— The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Jennings circuit court. Their salaries shall be paid monthly out of the treasury of Jennings County as provided by law. [P.L.18-1995, § 56.]

33-5-25.9-6. Court record books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.18-1995, § 56.]

33-5-25.9-7. Courtrooms and facilities — Funds for maintenance.

— The court shall hold its sessions in the Jennings County courthouse in Vernon, Indiana, or in another place in the county as the Jennings County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Jennings County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.18-1995, § 56.]

33-5-25.9-8. Jury commissioners — Jury selection — Grand juries.

— The jury commissioners appointed by the judge of the Jennings circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Jennings circuit court. The grand jury selected for Jennings circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.18-1995, § 56.]

33-5-25.9-9. Transfer of actions between courts. — The judge of the Jennings circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.18-1995, § 56.]

33-5-25.9-10. Movement of judges between courts. — The judge of the Jennings circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.18-1995, § 56.]

33-5-25.9-11. Small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.18-1995, § 56.]

CHAPTER 26

KNOX SUPERIOR COURT

SECTION.

- 33-5-26-1. Creation of court — Judges.
- 33-5-26-2. Seals.
- 33-5-26-3, 33-5-26-4. [Repealed.]
- 33-5-26-5. Sessions — Rooms and facilities.
- 33-5-26-6. Jurisdiction.
- 33-5-26-7 — 33-5-26-10. [Repealed.]
- 33-5-26-11. Powers of judge.
- 33-5-26-12, 33-5-26-13. [Repealed.]
- 33-5-26-14. Transfer of actions or proceedings.

SECTION.

- 33-5-26-15. Authority of circuit and superior court judges to sit in either court.
- 33-5-26-16. Books.
- 33-5-26-17, 33-5-26-17.1. [Repealed.]
- 33-5-26-18. Jury commissioners.
- 33-5-26-19 — 33-5-26-22. [Repealed.]

33-5-26-1. Creation of court — Judges. — (a) There is established a superior court in and for the county of Knox, Indiana, which has one (1) judge, who shall hold office for six (6) years, beginning on the first day of January after election, and ending December 31 following the election of the judge's successor. The court shall be known as Knox superior court No. 1. Every six (6) years, the voters of Knox County shall elect at the general election a judge for the superior court.

(b) An additional court of record is established to be known as the Knox superior court No. 2. Knox County constitutes the judicial district of the court. The Knox superior court No. 2 has one (1) judge, who shall be elected at the general election every six (6) years in Knox County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(c) To be eligible to hold office as judge of either court, a person must:

- (1) Be a resident of Knox County;
- (2) Be less than seventy (70) years of age at the time of taking office; and
- (3) Be admitted to the practice of law in Indiana.

[Acts 1925, ch. 17, § 1; p. 32; 1976, P.L. 133, § 17; P.L.392-1987(ss), § 6.]

Effective Dates. P.L.392-1987(ss), § 45. Practice of law as qualification, IC 33-13-9-1.
January 1, 1988.

Cross References. Beginning and expiration of term, IC 33-13-5-1.

33-5-26-2. Seals. — The courts shall each have a seal containing the words, "Knox Superior Court No. 1" or "Knox Superior Court No. 2", respectively. [Acts 1925, ch. 17, § 2, p. 32; P.L.392-1987(ss), § 7.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-3, 33-5-26-4. [Repealed.]

Compiler's Notes. These sections, concerning fees and duties of clerk and sheriff, were repealed by P.L.171-1984, § 80.

33-5-26-5. Sessions — Rooms and facilities. — The Knox superior courts shall hold sessions in the Knox County courthouse in Vincennes, Indiana, or at other places in the county as the county executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as necessary. The county fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [Acts 1925, ch. 17, § 5, p. 32; P.L.392-1987(ss), § 8.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-6. Jurisdiction. — (a) The Knox superior courts are courts of record with the same jurisdiction as the Knox circuit court.

(b) The Knox superior courts have exclusive juvenile jurisdiction.

(c) Each Knox superior court has a standard small claims and misdemeanor division. [Acts 1925, ch. 17, § 10, p. 32; 1949, ch. 19, § 1; 1978, P.L. 136, § 40; P.L.392-1987(ss), § 9.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-7 — 33-5-26-10. [Repealed.]

Compiler's Notes. These sections, relating to process, orders, and status as a court of record, were repealed by P.L.392-1987(ss), § 26, effective January 1, 1988. For present provisions pertaining to courts of record, see IC 33-5-26-6. For present provisions concerning powers and authority of judge, see IC 33-5-26-11.

33-5-26-11. Powers of judge. — The judge of each Knox superior court has the same powers relating to the conduct of the business of the court as the judge of the Knox circuit court. The judge of each court may also administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and give all necessary certificates for the authentication of the records and proceedings in the court. [Acts 1925, ch. 17, § 15, p. 32; P.L.392-1987(ss), § 10.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-12, 33-5-26-13. [Repealed.]

Compiler's Notes. These sections, relating to change of judge and venue, were repealed by P.L.392-1987(ss), § 26, effective January 1, 1988. For present provisions concerning venue, see IC 33-5-2-6. For present provisions concerning transfer of cases, see IC 33-5-26-14.

33-5-26-14. Transfer of actions or proceedings. — The judge of the Knox circuit court may, with the consent of the judge of a superior court, transfer any action or proceeding from the circuit court to the superior court. The judge of a superior court may, with the consent of the judge of the circuit or other superior court, transfer any action or proceeding from that superior

court to the circuit or other superior court. [Acts 1925, ch. 17, § 18, p. 32; P.L.392-1987(ss), § 11.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-26-15. Authority of circuit and superior court judges to sit in either court. — The judge of a superior court may, with the consent of the judge of the circuit or other superior court, sit as a judge of the circuit or other superior court in any matter as if the judge of the superior court was an elected judge of the circuit or other superior court. [Acts 1925, ch. 17, § 19, p. 32; P.L.392-1987(ss), § 12.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-16. Books. — The clerk of the court, under the direction of the judge, shall provide for court order books, judgment dockets, execution dockets, fee books, and other necessary books for each Knox superior court, which shall be kept separately from the books and papers of other courts. [Acts 1925, ch. 17, § 20, p. 32; P.L.392-1987(ss), § 13.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-26-17, 33-5-26-17.1. [Repealed.]

Compiler's Notes. These sections, concerning docket fees, were repealed by Acts 1979, P.L. 31, § 18 and P.L.171-1984, § 80.

For present provisions concerning docket fees, see IC 33-19.

33-5-26-18. Jury commissioners. — The jury commissioners appointed by the judge of the Knox circuit court shall serve as jury commissioners for the superior courts. Juries shall be selected in the same manner as juries for the Knox circuit court. The grand jury selected for the Knox circuit court shall also serve as the grand jury for the superior courts as necessary. [Acts 1925, ch. 17, § 22, p. 32; P.L.392-1987(ss), § 14.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

Cross References. Selection, qualification

33-5-26-19 — 33-5-26-22. [Repealed.]

Compiler's Notes. These sections, relating to fees of jurors and witnesses, appeals, change of venue, and carrying out the chapter, were repealed by P.L.171-1984, § 80 and P.L.392-1987(ss), § 26. For present provisions

concerning fees, see IC 33-19-1-4 — IC 33-19-1-6, for room and facility, see IC 33-5-26-5; for transfer of records, see IC 33-5-26-14; and for appeals, see IC 34-56-1.

CHAPTER 27

KOSCIUSKO SUPERIOR COURT

SECTION.

- 33-5-27-1. Court created — Judges — Term — Election.
 33-5-27-2. Name of court — Seal.
 33-5-27-3. Jurisdiction.
 33-5-27-4. Rules and regulations — Incidental powers of judge.
 33-5-27-5. Process — Authority of court.
 33-5-27-6. Term of court.
 33-5-27-7. [Repealed.]
 33-5-27-8. Bailiff and court reporter.
 33-5-27-9. [Repealed.]
 33-5-27-10. Records and papers.

SECTION.

- 33-5-27-11. Where court held — Facilities — Provision by board of commissioners — Appropriation.
 33-5-27-12. Jury commissioners — Petit jury, selection and attendance — Grand jury.
 33-5-27-13. [Repealed.]
 33-5-27-14. Laws applicable to court.
 33-5-27-15. Appeals.
 33-5-27-16. Transfer of cases between courts.
 33-5-27-17. Authority of circuit judge to sit in superior court.

33-5-27-1. Court created — Judges — Term — Election. — There is hereby created a superior court in and for the county of Kosciusko, Indiana, which shall consist of three (3) judges, who shall hold office for a term of six (6) years, beginning on the first day of January after election, and until a successor is elected and qualified. Every six (6) years, the voters of Kosciusko County shall elect at the general election judges for the superior court. [Acts 1969, ch. 79, § 1; 1976, P.L. 133, § 18; P.L.18-1995, § 57.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 57 provided that the amendment take effect January 1, 1997.

Cross References. Judges, admission to

practice of law as qualification, IC 33-13-9-1.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-27-2. Name of court — Seal. — (a) The superior court created by this chapter shall be known as the “Superior Court of Kosciusko County”, and the county of Kosciusko shall be and constitute the judicial district of the court. The court shall be a court of record of general jurisdiction, and shall have a seal containing the words “Superior Court No. 1 of Kosciusko County, Indiana”, “Superior Court No. 2 of Kosciusko County, Indiana”, or “Superior Court No. 3 of Kosciusko County, Indiana”.

(b) Superior court No. 2 and superior court No. 3 each have a standard small claims and misdemeanor docket. [Acts 1969, ch. 79, § 2; 1981, P.L. 272, § 58; P.L.18-1995, § 58.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 58 provided that the amendment take effect January 1, 1997.

33-5-27-3. Jurisdiction. — The superior court has the same jurisdiction as the circuit court. [Acts 1969, ch. 79, § 3; 1978, P.L. 136, § 41.]

33-5-27-4. Rules and regulations — Incidental powers of judge. — (a) Each judge of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the powers incident to

a court of record, in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders.

(b) Each judge shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgement of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. Each judge shall have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writ of habeas corpus and of mandate and prohibition, to appoint receivers, masters, and commissioners to convey real property, to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the circuit court judges. [Acts 1969, ch. 79, § 4; P.L.18-1995, § 59.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 59 provided that the amendment take effect January 1, 1997.

33-5-27-5. Process — Authority of court. — The court shall have the power to issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals which shall be necessary in exercising the jurisdiction hereby conferred and for the regular execution of this chapter, and to make all proper judgments, sentences, decrees, orders and injunctions as may be necessary to carry into effect the same in conformity with the laws of this state.

The process of the court shall have the seal affixed, be attested, directed, served, returned and be in form as is provided for process issuing from the circuit court. [Acts 1969, ch. 79, § 5; 1981, P.L. 272, § 59.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-27-6. Term of court. — The term of court of the superior court shall be the calendar year, and each judge shall have the same power to act in all matters and proceedings through the entire calendar year. [Acts 1969, ch. 79, § 6; P.L.18-1995, § 60.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 60 provided that the amendment take effect January 1, 1997.

Cross References. Terms of court, IC 33-1-6-1 — IC 33-1-6-5.

33-5-27-7. [Repealed.]

Compiler's Notes. This section, concerning salary of judge, was repealed by P.L.171-1984, § 80.

33-5-27-8. Bailiff and court reporter. — (a) Each judge of the superior court shall appoint a bailiff and an official court reporter for the court, to serve as such during the pleasure of the court.

(b) Each judge shall fix the compensation of the bailiff and official court reporter within the limits and in the manner as may be provided by law

concerning the bailiff and official court reporter of the Kosciusko circuit court. The compensation shall be paid monthly out of the treasury of Kosciusko County in the manner provided by law. [Acts 1969, ch. 79, § 8; P.L.171-1984, § 39; P.L.18-1995, § 61.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 61 provided that the amendment take effect January 1, 1997.

Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

Cross References. Salary of bailiff, IC 33-13-4-1.

33-5-27-9. [Repealed.]

Compiler's Notes. This section, concerning fees of court, was repealed by P.L.171-1984, § 80.

33-5-27-10. Records and papers. — The clerk, under the direction of each judge, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for each court, and all books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts. [Acts 1969, ch. 79, § 10; P.L.18-1995, § 62.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 62 provided that the amendment take effect January 1, 1997.

33-5-27-11. Where court held — Facilities — Provision by board of commissioners — Appropriation. — (a) The superior court of Kosciusko County shall hold its sessions in the Kosciusko County courthouse in the city of Warsaw, Indiana, or at such other place in the city of Warsaw, Indiana, as the board of county commissioners may provide.

(b) The board of county commissioners of Kosciusko County, Indiana, shall provide and maintain suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for each judge and official court reporter and such other facilities as may be necessary. The board of county commissioners shall also provide all the necessary furniture and equipment for the rooms and offices of the court, and the county council shall appropriate sufficient funds therefor. [Acts 1969, ch. 79, § 11; P.L.18-1995, § 63.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 63 provided that the amendment take effect January 1, 1997.

33-5-27-12. Jury commissioners — Petit jury, selection and attendance — Grand jury. — (a) The jury commissioners appointed by the judge of the circuit court shall serve as jury commissioners for the superior court.

(b) The clerk of the superior court and jury commissioners of the superior court shall, as provided by law, proceed to select a petit jury of the superior

court at the same time and in the same manner as provided by law for the circuit court of the county.

(c) The officers in selecting and the clerk in issuing the process for the jury and the sheriff in serving the process for the jury shall in all things be governed by law prescribed for the selection of petit jurors in the circuit court of the county.

(d) The judges of the superior court may order on what day of the term the jurors shall be summoned to attend the superior court and may order the selecting and summoning of other jurors for the superior court whenever necessary.

(e) The grand jury last previously selected for the circuit court shall also serve as the grand jury for the superior court from time to time as may be required. [Acts 1969, ch. 79, § 12; P.L.18-1995, § 64.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 64 provided that the amendment take effect January 1, 1997.

Cross References. Jury fee, per diem and mileage, IC 33-19-1-4.

Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

33-5-27-13. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed

by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-27-14. Laws applicable to court. — All laws and rules duly adopted by the Supreme Court of Indiana now in force, or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and the selection of jurors for the court shall be applicable to and govern the court hereby established. [Acts 1969, ch. 79, § 14.]

Cross References. Change from county, venue, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-5-27-15. Appeals. — Any party may appeal to the supreme court or the court of appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law governing appeals from the circuit court to the court of appeals and the supreme court. [Acts 1969, ch. 79, § 15; P.L.3-1989, § 195.]

33-5-27-16. Transfer of cases between courts. — The judge of the circuit court may, with the consent of the superior court, transfer any action, cause, or proceeding filed and docketed in the circuit court to the superior court by transferring all original papers and instruments filed in such action, cause, or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the superior court. The judges of the superior court may, with the consent of the judge of the circuit

court transfer any action, cause, or proceeding filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in such action, cause, or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court. [Acts 1969, ch. 79, § 16; P.L.18-1995, § 65.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 65 provided that the amendment take effect January 1, 1997.

Cross References. Circuit courts, transfer

of cases and causes to superior court, IC 33-5-4-2.

Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-27-17. Authority of circuit judge to sit in superior court. — The judge of the Kosciusko Circuit Court shall be at his discretion, authorized to sit as judge of the superior court, with the court's permission, in all matters pending before said superior court without limitation and without any further order, in the same manner and stead as if he were a judge of said superior court with all the rights and powers as if he were a duly elected judge of said superior court. [Acts 1969, ch. 79, § 17.]

CHAPTER 27.5

LAGRANGE SUPERIOR COURT

SECTION.

33-5-27.5-1. Court created — Seal.

33-5-27.5-2. Judge.

33-5-27.5-3. Jurisdiction.

33-5-27.5-4. Powers of judge.

33-5-27.5-5. Bailiff and court reporter.

33-5-27.5-6. Books.

33-5-27.5-7. Sessions — Rooms and facilities.

33-5-27.5-8. Jury commissioners.

SECTION.

33-5-27.5-9. Transfer of actions or proceedings.

33-5-27.5-10. Authority of circuit and superior court judges to sit in either court.

33-5-27.5-11. Standard small claims and misdemeanor division.

33-5-27.5-1. Court created — Seal. — There is established a court of record to be known as the LaGrange superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “LaGrange Superior Court, LaGrange County, Indiana”. LaGrange County comprises the judicial district of the court. [P.L.392-1987(ss), § 15.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-27.5-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in LaGrange County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of LaGrange County;

(2) Be less than seventy (70) years of age at the time of taking office; and

(3) Be admitted to the practice of law in Indiana.

[P.L.392-1987(ss), § 15.]

33-5-27.5-3. Jurisdiction. — The court has the same jurisdiction as the LaGrange circuit court. [P.L.392-1987(ss), § 15.]

33-5-27.5-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the LaGrange circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.392-1987(ss), § 15.]

33-5-27.5-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the LaGrange circuit court. Their salaries shall be paid monthly out of the treasury of LaGrange County as provided by law. [P.L.392-1987(ss), § 15.]

33-5-27.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.392-1987(ss), § 15.]

33-5-27.5-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the LaGrange County courthouse in LaGrange, Indiana, or in such other places in the county as the LaGrange county executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The LaGrange County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.392-1987(ss), § 15.]

33-5-27.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the LaGrange circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the LaGrange circuit court. The grand jury selected for the LaGrange circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.392-1987(ss), § 15.]

33-5-27.5-9. Transfer of actions or proceedings. — The judge of the LaGrange circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.392-1987(ss), § 15.]

33-5-27.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the LaGrange circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as

if the judge of the circuit court was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the court was an elected judge of the circuit court. [P.L.392-1987(ss), § 15.]

33-5-27.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.392-1987(ss), § 15.]

CHAPTER 28

LAKE AND LAPORTE SUPERIOR COURTS

33-5-28-1 — 33-5-28-13. [Repealed.]

Compiler's Notes. This chapter, relating to Lake County and LaPorte County superior courts was repealed by P.L.4-1988, § 19.

CHAPTER 29

JUDICIAL DISTRICT OF LAKE SUPERIOR COURT — LAKE COUNTY

33-5-29-1 — 33-5-29-3. [Repealed.]

Compiler's Notes. These sections, concerning the establishment of the Lake Superior Court District, were repealed by Acts

1973, P.L. 308, § 2. For present law, see IC 33-5-29.5.

CHAPTER 29.5

SUPERIOR COURT OF LAKE COUNTY

SECTION.

- 33-5-29.5-1. Establishment.
- 33-5-29.5-2. Name.
- 33-5-29.5-3. Seal.
- 33-5-29.5-4. Jurisdiction.
- 33-5-29.5-5. Court of record.
- 33-5-29.5-6. Rules of court — Incidental power of judges.
- 33-5-29.5-7. Orders, injunctions and writs — Other powers of judges.
- 33-5-29.5-7.1. Magistrate — Criminal division.
- 33-5-29.5-7.2. Magistrates — Divisions No. 1, 2, and 3.
- 33-5-29.5-8. Officers and other court personnel and employees.
- 33-5-29.5-9. Location of sessions — Facilities provided — Provision by board of commissioners.
- 33-5-29.5-10 — 33-5-29.5-13. [Repealed.]
- 33-5-29.5-14. Books, papers and records.
- 33-5-29.5-15. Order books.
- 33-5-29.5-16. Laws and rules governing circuit court apply — Change of judge.
- 33-5-29.5-17. Appeals from orders or judgments.

SECTION.

- 33-5-29.5-18. Process.
- 33-5-29.5-19. Chief judge — Senior judges.
- 33-5-29.5-20. Action by entire court — Decisions.
- 33-5-29.5-21. Divisions of the court — Assignment of judge — Allocation of cases.
- 33-5-29.5-22. [Repealed.]
- 33-5-29.5-23. Receipt of cases from circuit court.
- 33-5-29.5-24. Transfer of cases to circuit court.
- 33-5-29.5-25. Circuit judge authorized to sit.
- 33-5-29.5-26. Terms of incumbent judges.
- 33-5-29.5-27. Number of judges — Appointment and terms of additional judges.
- 33-5-29.5-28. Judicial nominating commission established — Provision by board of commissioners — Reimbursements.
- 33-5-29.5-29. Composition of commission.
- 33-5-29.5-30. Nonattorney commission members — Appointment — Terms — Vacancies.

SECTION.

- 33-5-29.5-31. Attorney commission members — Qualifications — Terms — Vacancies.
- 33-5-29.5-32. Notice — Nomination — Ballots — Election of attorney commission members.
- 33-5-29.5-33. Notice of appointment or election to commission.
- 33-5-29.5-34. Limitation on successive terms.
- 33-5-29.5-35. Vacancy in court — Notice to commission — Nomination of candidates — Meetings — Quorum — Rules.
- 33-5-29.5-36. Requirements for selection of candidates.
- 33-5-29.5-37. Written evaluation of candidates — Disclosure of records.
- 33-5-29.5-38. Withdrawal of nominee's name — Multiple vacancies — Changes in nominations.

SECTION.

- 33-5-29.5-39. Appointment by governor — Deadline — Appointment by chief justice.
- 33-5-29.5-40. Effective dates of appointments.
- 33-5-29.5-41. Terms of judges.
- 33-5-29.5-42. Approval of judges by electorate — Election board — Form of ballot — Term of office.
- 33-5-29.5-42.5. Election of judge of county division.
- 33-5-29.5-43. Conditions of office of judge.
- 33-5-29.5-44 — 33-5-29.5-68. [Repealed.]
- 33-5-29.5-69, 33-5-29.5-70. [Repealed.]
- 33-5-29.5-71. Jury commissioners — Selection of jurors — Summoning of jurors — List of jurors.

33-5-29.5-1. Establishment. — There shall be and is hereby established a superior court in Lake County, Indiana (hereinafter referred to as “the court”). [IC 33-5-29.5-1, as added by Acts 1973, P.L. 308, § 1.]

Opinions of Attorney General. The general assembly intended that what the clerk of the Lake Circuit Court and the sheriff of Lake County are paid be full time salaries, and they cannot receive any additional compensation for acting as clerk and sheriff of the Lake

County Superior Court. 1980, No. 80-41, p. 129.

Cited: *Pruitt v. Kimbrough*, 536 F. Supp. 764 (N.D. Ind. 1982), *aff'd*, 705 F.2d 462 (7th Cir. 1983).

33-5-29.5-2. Name. — The court shall be named and styled the Superior Court of Lake County. [IC 33-5-29.5-2, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-3. Seal. — The court shall have a seal consisting of a circular disc containing the words, “Superior Court of Lake County, Indiana,” “seal,” and such design as the court may determine, an impression of which shall be spread of record upon the order book of the court. [IC 33-5-29.5-3, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-4. Jurisdiction. — (a) The superior court, within and for the county of Lake:

- (1) has the same jurisdiction as the Lake circuit court in all civil and probate cases and matters whether original or appellate;
- (2) has original exclusive jurisdiction of all felony cases;
- (3) has original concurrent jurisdiction of all misdemeanor cases, infraction cases, and ordinance violation cases;
- (4) has such appellate jurisdiction in criminal cases as is vested in the circuit court; and
- (5) has original exclusive juvenile jurisdiction.

(b) Notwithstanding IC 31-30-1-2, the juvenile court has exclusive jurisdiction over a child who:

- (1) has been taken into custody in the county; and

(2) has allegedly committed an act that would be a misdemeanor traffic offense if committed by an adult. [IC 33-5-29.5-4, as added by Acts 1973, P.L. 308, § 1; 1978, P.L. 136, § 42; P.L.176-1988, § 6; P.L.271-1989, § 3; P.L.1-1990, § 319; P.L.1-1997, § 124.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Cited: *Laskowski v. Mears*, 600 F. Supp.

1568 (N.D. Ind. 1985); *Lowe v. Letsinger*, 772 F.2d 308 (7th Cir. 1985); *State Farm Fire & Cas. Ins. Co. v. DeCero*, 565 N.E.2d 360 (Ind. App. 1991).

NOTES TO DECISIONS

ANALYSIS

Adoption proceedings.

Damages.

Limited jurisdiction.

Plenary docket.

Adoption Proceedings.

In Lake County, the circuit court and superior court have concurrent jurisdiction over probate matters. The superior court of Lake County is divided into four divisions, civil (including probate), criminal, county, and juvenile. The juvenile division does not have jurisdiction in probate matters, and thus cannot assert jurisdiction in an adoption proceeding. Either the civil division of the superior court or the circuit court could hear an adoption matter. As a result, the Lake County Circuit Court properly exercised its jurisdiction when hearing a petition to revoke an adoption. *Lake County Div. of Family & Children Servs. v. T.B.*, 622 N.E.2d 921 (Ind. 1993).

Damages.

The jurisdiction of the Lake superior court, county division, in civil tort actions is limited to cases with claimed damages of \$10,000 or less. *Superior Constr. Co. v. Carr*, 564 N.E.2d 281 (Ind. 1990).

Limited Jurisdiction.

The Lake superior court, county division, possesses the same limited jurisdiction granted to the county courts. *Superior Constr. Co. v. Carr*, 564 N.E.2d 281 (Ind. 1990).

Plenary Docket.

The county division of the superior court of Lake County has subject matter jurisdiction of cases filed of record on its plenary docket which seek damages in excess of \$10,000 even though the legislature has taken away the substantive right to an automatic change of venue from the county as to cases pending on such docket. *Superior Constr. Co. v. Carr*, 550 N.E. 805 (Ind. App. 1990).

33-5-29.5-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the Lake Circuit Court. [IC 33-5-29.5-5, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-6. Rules of court — Incidental power of judges. — The court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and the rules of the Supreme Court of Indiana, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and all legal instruments, and to give all necessary certificates for the authentication of the records and proceedings in the court. [IC 33-5-29.5-6, as added by Acts 1973, P.L. 308, § 1.]

Cited: State ex rel. Sufana v. Superior Court, 269 Ind. 466, 65 Ind. Dec. 113, 381 N.E.2d 475 (1978); Laskowski v. Mears, 600 F. Supp. 1568 (N.D. Ind. 1985).

33-5-29.5-7. Orders, injunctions and writs — Other powers of judges. — The court shall have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writs of habeas corpus, to appoint receivers, masters, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof in counties where there is no criminal court. [IC 33-5-29.5-7, as added by Acts 1973, P.L. 308, § 1.]

Cited: Laskowski v. Mears, 600 F. Supp. 1568 (N.D. Ind. 1985).

NOTES TO DECISIONS

ANALYSIS

Federal civil rights action.
—Judge’s immunity from liability.

Federal Civil Rights Action.

—**Judge’s Immunity From Liability.**
A superior court judge’s four-year delay in

deciding a post-conviction relief petition and his role in the decision not to notify the defendant for three weeks that he had been granted a new trial was cloaked with absolute judicial immunity in a federal civil rights action. *Lowe v. Letsinger*, 772 F.2d 308 (7th Cir. 1985).

33-5-29.5-7.1. Magistrate. — Criminal division. — The judges of the criminal division may appoint two (2) full-time magistrates under IC 33-4-7. The magistrates continue in office until removed by the judges of the criminal division. [P.L.300-1985, § 3; P.L.378-1987(ss), § 7; P.L.334-1989(ss), § 14; P.L.18-1995, § 66.]

NOTES TO DECISIONS

Constitutionality.

Since magistrates are not appointed by the legislature or the governor but by the judiciary and their appointment is not even man-

dated, the magistrate act was constitutional as it operated in post conviction proceeding. *Matheney v. State*, 688 N.E.2d 883 (Ind. 1997).

33-5-29.5-7.2. Magistrates — Divisions No. 1, 2, and 3. — (a) The judge of division No. 1, division No. 2, and division No. 3 of the court may each appoint one (1) full-time magistrate under IC 33-4-7 to serve as the court requires. A magistrate appointed under this section:

- (1) Need not be a resident of the county; and
- (2) Continues in office until removed by the judge that the magistrate serves.

(b) The appointment of a magistrate under this section must be in writing.

(c) The judge may specifically determine the duties of the magistrate within the limits established under IC 33-4-7.

(d) The county executive shall provide and maintain suitable facilities for the use of the magistrate, including necessary furniture and equipment.

(e) The court shall employ administrative staff necessary to support the functions of the magistrates.

(f) The county fiscal body shall appropriate sufficient funds for the provision of staff and facilities required under this section.

(g) A magistrate is entitled to annual compensation as established under IC 33-4-7-9.1. The state shall pay the salary set under IC 33-4-7-9.1. [P.L.334-1989(ss), § 15; P.L.133-1992, § 32; P.L.280-1995, § 3.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 3 provided that the amendment take effect August 1, 1997.

NOTES TO DECISIONS

Constitutionality.

Since magistrates are not appointed by the legislature or the governor but by the judiciary and their appointment is not even man-

dated, the magistrate act was constitutional as it operated in post conviction proceeding. *Matheney v. State*, 688 N.E.2d 883 (Ind. 1997).

Collateral References. Referee's failure to file report within time specified by statute,

court order, or stipulation as terminating reference. 71 A.L.R.4th 889.

33-5-29.5-8. Officers and other court personnel and employees. —

(a) The senior judge of each division may appoint the number of bailiffs, court reporters, probation officers, and other personnel, as in the opinion of the senior judge is necessary to judicially and efficiently facilitate and transact the business of the division. All appointments shall be made without regard to the political affiliation of the appointees. The salaries of the court personnel shall be fixed and paid as provided by law. The officers and persons appointed shall:

(1) perform the duties prescribed by the senior judge of each respective division; and

(2) serve at the pleasure of the senior judge.

(b) The court shall appoint an administrative officer who shall have the duties as the court shall determine necessary to ensure the efficient operation of the court. The court may appoint the number of deputy administrative officers as the court considers necessary to facilitate and transact the business of the court. Any appointment of an administrative officer or deputy administrative officer shall be made without regard to the political affiliation of the appointees. The salaries of the administrative officer and any deputy administrative officer shall be fixed by the court, to be paid out of the county treasury by the county auditor, upon the order of the court, and entered of record. Any administrative officer or deputy administrative officer appointed by the court shall:

(1) operate under the jurisdiction of the chief judge; and

(2) serve at the pleasure of the chief judge.

(c) The court may appoint part-time juvenile referees and magistrates as provided by IC 31-31-3.

(d) The court may appoint the number of probate commissioners provided for by IC 29-2-2. The probate commissioners shall be vested with the powers and duties provided by IC 29. [IC 33-5-29.5-8, as added by Acts 1973, P.L. 308, § 1; 1975, P.L. 307, § 1; 1976, P.L. 134, § 1; Acts 1980, P.L. 189, § 2; P.L.292-1983, § 6; P.L.300-1985, § 4; P.L.334-1989(ss), § 16; P.L.1-1997, § 125.]

Cited: *McMillan v. Svetanoff*, 793 F.2d 149 (7th Cir.), cert. denied, 479 U.S. 985, 107 S. Ct. 574, 93 L. Ed. 2d 577 (1986).

NOTES TO DECISIONS

ANALYSIS

Construction.

Dismissal.

—Procedural due process.

—Property right.

Party affiliation.

Public defenders.

Construction.

The language in this section that court employees serve “at the pleasure of” the senior or chief judge means the senior or chief judge can fire court employees, not another judge. *Larson v. Cantrell*, 974 F. Supp. 1211 (N.D. Ind. 1997).

Dismissal.

—Procedural Due Process.

Where a teacher was presumably appointed as “other court personnel” pursuant to this section but the section did not specifically name his position, a factual issue remained as to whether he knew or should have known of his quasi-“at-will” status, so he could argue his procedural due process rights at trial. *Laskowski v. Mears*, 600 F. Supp. 1568 (N.D. Ind. 1985).

Procedural due process claim of assistant superintendent’s dismissal by the senior judge rather than the chief judge withstood

defendant judge’s challenge. *Laskowski v. Mears*, 600 F. Supp. 1568 (N.D. Ind. 1985).

The “at the pleasure of” provision in subsection (a) clearly indicates the legislature’s intent not to give employees appointed by the court a property interest in their positions. Because no property interest exists, no procedural due process attaches. *McDonald v. Krajewski*, 649 F. Supp. 370 (N.D. Ind. 1986).

—Property Right.

Court reporter, who was an at-will employee at the time she was terminated by a newly-appointed superior court judge, had no constitutionally protected property interest in retaining her position as a court reporter. *McMillan v. Svetanoff*, 878 F.2d 186 (7th Cir. 1989).

Party Affiliation.

Position of probation officer is unprotected, and a person in that position may be fired for her political affiliation without violating her rights under the First Amendment. *Larson v. Cantrell*, 974 F. Supp. 1211 (N.D. Ind. 1997).

Public Defenders.

Failure of county to form public defender board did not prove county delegated authority to hire and fire public defenders to senior judge, or that county was liable for a judge’s firing of public defenders. *Larson v. Cantrell*, 974 F. Supp. 1211 (N.D. Ind. 1997).

33-5-29.5-9. Location of sessions — Facilities provided — Provision by board of commissioners. — The Superior Court of Lake County shall hold continuous sessions in such places in Lake County as the court may from time to time determine. The board of county commissioners of Lake County shall provide and maintain suitable and convenient court rooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, and other court officers and personnel, and such other facilities as may be necessary. The board of county commissioners of Lake County shall also provide all necessary furniture and equipment for rooms and offices of the court. [IC 33-5-29.5-9, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-10 — 33-5-29.5-13. [Repealed.]

Compiler's Notes. These sections, concerning salaries of judges, duties and responsibilities of clerk and sheriff and fees, were repealed by P.L.171-1984, § 80.

33-5-29.5-14. Books, papers and records. — The clerk of the Lake Circuit Court, under the direction of the court, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for the court, and all books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts. [IC 33-5-29.5-14, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-15. Order books. — The court shall maintain an order book at each location of the court and the order books may be signed on behalf of the court by any of the judges of said court, and such signature shall be due authentication of the actions of each of the judges in the court. [IC 33-5-29.5-15, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-16. Laws and rules governing circuit court apply — Change of judge. — All laws of the state and rules adopted by the supreme court of Indiana governing the circuit courts of this state apply to the superior court. However:

- (1) No person other than a judge of the superior court of Lake County may serve as a special judge when a change of judge is requested from the superior court of Lake County;
- (2) A judge of the superior court of Lake County shall receive no compensation other than regular salary for serving as a special judge where the change of venue from the judge was granted by the superior court of Lake County;
- (3) The statutes and rules governing the records, procedures, and practices of county courts apply to the county division of the court; and
- (4) There is no change of venue from the county as of right in cases in the county division of the court. [IC 33-5-29.5-16, as added by Acts 1973, P.L. 308, § 1; P.L.176-1988, § 7.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Cross References. Change of venue from county, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

Jury selection in Lake County, IC 33-4-5.5-1 — IC 33-4-5.5-22.

Cited: State ex rel. Sufana v. Superior Court, 269 Ind. 466, 65 Ind. Dec. 113, 381 N.E.2d 475 (1978).

NOTES TO DECISIONS**ANALYSIS**

Change of venue.
Jurisdiction.

Change of Venue.

Subdivision (4) validly prohibits change of venue as of right from the county division.

Superior Constr. Co. v. Carr, 564 N.E.2d 281 (Ind. 1990).

Jurisdiction.

The Lake superior court, county division, possesses the same limited jurisdiction granted to the county courts. Superior Constr. Co. v. Carr, 564 N.E.2d 281 (Ind. 1990).

Jurisdiction. (Cont'd)

The jurisdiction of the Lake superior court, county division, in civil tort actions is limited to cases with claimed damages of \$10,000 or less. Superior Constr. Co. v. Carr, 564 N.E.2d 281 (Ind. 1990).

Lake superior court, county division, properly denied a motion for change of venue in a civil suit with potential damages in excess of

\$10,000, but, because the jurisdiction of the county division in civil tort cases is limited to cases in which the damages claimed do not exceed \$10,000, the trial court should have either placed a \$10,000 cap on the damages requested by the plaintiffs or ordered the case transferred to the Lake superior court, civil division. Superior Constr. Co. v. Carr, 564 N.E.2d 281 (Ind. 1990).

33-5-29.5-17. Appeals from orders or judgments. — Any party may appeal from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. [IC 33-5-29.5-17, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-18. Process. — The process of the court shall have the seal affixed and be attested, directed, served, and returned, and be in the form as is, or may be, provided for process issuing from the circuit court. [IC 33-5-29.5-18, as added by Acts 1973, P.L. 308, § 1.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-29.5-19. Chief judge — Senior judges. — (a) The court, by rules duly adopted by the court, shall designate one (1) of the judges as chief judge and shall fix the time that the chief judge shall preside. The chief judge shall be responsible for the efficient operation and conduct of the court.

(b) The judges of each division of the court, in accordance with the rules adopted by the judges of that division, shall designate a judge as the senior judge of that division and fix the time that the senior judge shall serve.

(c) The senior judge of each division shall report to the chief judge as to how the division should best judicially operate. [IC 33-5-29.5-19, as added by Acts 1973, P.L. 308, § 1; P.L.176-1988, § 8.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Cited: State ex rel. Sufana v. Superior

Court, 269 Ind. 466, 65 Ind. Dec. 113, 381 N.E.2d 475 (1978); Larson v. Cantrell, 974 F. Supp. 1211 (N.D. Ind. 1997).

33-5-29.5-20. Action by entire court — Decisions. — Whenever any action of the entire court is required, then the judges of the court shall act in concert. In the event of disagreement, then the decision of a majority of the judges shall control. However, if the judges are evenly divided, the decision joined by the chief judge shall control. [IC 33-5-29.5-20, as added by Acts 1973, P.L. 308, § 1; P.L.176-1988, § 9.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Cited: State ex rel. Sufana v. Superior Court, 269 Ind. 466, 65 Ind. Dec. 113, 381 N.E.2d 475 (1978).

33-5-29.5-21. Divisions of the court — Assignment of judge — Allocation of cases. — (a) The court is divided into civil (including probate), criminal, county, and juvenile divisions. The work of the court shall be divided among the divisions by the rules of the court.

(b) Five (5) judges comprise the civil division. Four (4) judges comprise the criminal division. Three (3) judges comprise the county division. One (1) judge comprises the juvenile division. However, the court by rule may alter the number of judges assigned to a division other than the county division of the court if the court determines that the change is necessary for the efficient operation of the court.

(c) The court by rule may reassign a judge of the court from one (1) division to another if the court determines that the change is necessary for the efficient operation of the court. The court by rule shall establish a rotation schedule providing for the rotation of judges through the various divisions. The rotation schedule may be used if a judge determines that an emergency exists. However, a senior judge of any division or a judge of the county division may not be reassigned or rotated to another division under this subsection.

(d) The chief judge of the court may assign a judge in one (1) division of the court to hear a case originating in another division of the court, and may reassign cases from one (1) judge to another, if the chief judge determines that the change is necessary for the efficient operation of the court. [IC 33-5-29.5-21, as added by Acts 1973, P.L. 308, § 1; P.L.176-1988, § 10; P.L.334-1989(ss), § 17.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

NOTES TO DECISIONS

Adoption Proceedings.

In Lake County, the circuit court and superior court have concurrent jurisdiction over probate matters. The superior court of Lake County is divided into four divisions, civil (including probate), criminal, county, and juvenile. The juvenile division does not have jurisdiction in probate matters, and thus cannot assert jurisdiction in an adoption proceed-

ing. Either the civil division of the superior court or the circuit court could hear an adoption matter. As a result, the Lake County Circuit Court properly exercised its jurisdiction when hearing a petition to revoke an adoption. *Lake County Div. of Family & Children Servs. v. T.B.*, 622 N.E.2d 921 (Ind. 1993).

33-5-29.5-22. [Repealed.]

Compiler's Notes. This section, which abolished the prior Lake County superior, criminal, and juvenile courts, and provided

for the transfer of cases from those courts, was repealed by Acts 1978, P.L. 2, § 3308.

33-5-29.5-23. Receipt of cases from circuit court. — The judge of the Lake Circuit Court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the Lake Circuit Court to this court by transferring all original papers and instruments filed in such action, cause or proceeding and without further transcript thereof to be

redocketed and disposed of as if originally filed with this court. [IC 33-5-29.5-23, as added by Acts 1973, P.L. 308, § 1.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-29.5-24. Transfer of cases to circuit court. — Any judge of this court may, with the consent of the judge of the Lake Circuit Court, transfer any civil action, cause or proceeding filed and docketed in this court to the Lake Circuit Court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the Lake Circuit Court. [IC 33-5-29.5-24, as added by Acts 1973, P.L. 308, § 1.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-29.5-25. Circuit judge authorized to sit. — The judge of the Lake Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in the civil division, without limitation and without any further order, in the same manner and stead as if he were a judge of this court with all the rights and powers as if he were a duly appointed judge of this court. [IC 33-5-29.5-25, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-26. Terms of incumbent judges. — (a) Unless the judge is a judge of the county division, at the general election immediately preceding the expiration of a judge's extended term the question of that judge's retention in office or rejection shall be submitted to the electorate of Lake County under section 42 [IC 33-5-29.5-42] of this chapter. Thereafter, unless rejected by the electorate, each such judge shall serve successive terms as provided in section 41(b) [IC 33-5-29.5-41(b)] of this chapter.

(b) A judge of the county division may serve a successive term if elected to serve a successive term under section 42.5 [IC 33-5-29.5-42.5] of this chapter. [IC 33-5-29.5-26, as added by Acts 1973, P.L. 308, § 1; 1975, P.L. 307, § 2; 1981, P.L. 272, § 63; P.L.334-1989(ss), § 18.]

33-5-29.5-27. Number of judges — Appointment and terms of additional judges. — The superior court of Lake County shall consist of thirteen (13) judges plus the Lake circuit court judge if the circuit court judge chooses to sit on the superior court of Lake County. [IC 33-5-29.5-27, as added by Acts 1973, P.L. 308, § 1; 1975, P.L. 307, § 3; P.L.176-1988, § 11.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Indiana Law Review. Women Executives,

Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

Cited: Bradley v. Indiana State Election Bd., 797 F. Supp. 694 (S.D. Ind. 1992).

33-5-29.5-28. Judicial nominating commission established — Provision by board of commissioners — Reimbursements. — (a) There is hereby established a judicial nominating commission for the Superior Court of Lake County, the functions, responsibilities and procedures of which are set forth in sections 29 through 38 [IC 33-5-29.5-29 through IC 33-5-29.5-38] of this chapter.

(b) The board of county commissioners of Lake County shall provide all facilities, equipment, supplies and services as may be necessary for the administration of the duties imposed upon this commission. The members of this commission shall serve without compensation. However, the board of county commissioners of Lake County shall reimburse members of this commission for their actual expenses incurred in performing their duties. [IC 33-5-29.5-28, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 67.]

Cited: *Bradley v. Indiana State Election Bd.*, 797 F. Supp. 694 (S.D. Ind. 1992).

33-5-29.5-29. Composition of commission. — (a) The judicial nominating commission (hereafter called the commission) shall consist of nine (9) members, the majority of whom shall form a quorum. The chief justice of the Indiana Supreme Court (or a justice of the Indiana Supreme Court or judge of the Indiana Court of Appeals designated by the chief justice) shall be a member and shall act as chairman.

(b) Under sections 31 and 32 [IC 33-5-29.5-31 and IC 33-5-29.5-32] of this chapter, those admitted to the practice of law and residing in Lake County shall elect four (4) of their number to serve as members of the commission, subject to the following:

(1) At least one (1) attorney member must be a minority individual (as defined in IC 20-12-21.7-4).

(2) Two (2) attorney members must be women.

(3) Two (2) attorney members must be men.

(c) The Lake County board of commissioners shall appoint four (4) nonattorney citizens to the commission, subject to the following:

(1) Each of the three (3) county commissioners shall appoint one (1) nonattorney member who is a resident of the appointing commissioner's district.

(2) After each county commissioner has had the opportunity to make the county commissioner's appointment, the fourth nonattorney member must be appointed by a majority vote of the Lake County board of commissioners.

(3) At least one (1) nonattorney member must be a minority individual (as defined in IC 20-12-21.7-4).

(4) Two (2) nonattorney members must be women.

(5) Two (2) nonattorney members must be men.

(6) Not more than two (2) of such appointees may be from the same political party.

The appointees shall reflect the composition of the community. If the Lake County board of commissioners fails to appoint any of the nonattorney commission members within the time required to do so in section 30 of this

chapter, such appointment shall be made by the chief justice of the Indiana supreme court.

(d) No member of the commission, other than a judge or justice, shall hold any other elected public office. No member shall hold an office in a political party or organization. A nonattorney member of the commission may not hold an elected or salaried public office. A nonattorney member may not be an employee of the state or of a political subdivision of the state.

(e) A member of the commission is not eligible for appointment to a judicial office in Lake County so long as the member is a member of the commission and for a period of three (3) years thereafter.

(f) If any member of the commission, other than a judge or justice, terminates the member's residence in Lake County, the member shall be considered to have resigned from the commission. [IC 33-5-29.5-29, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 68.]

NOTES TO DECISIONS

Selection of Minority Judges.

The amendments to this chapter effective July 1, 1995, expanded the number of members on the Lake County judicial nominating

commission from seven to nine, and made other changes directed at increasing the likelihood of selection of minority judges. *Bradley v. Work*, 916 F. Supp. 1446 (S.D. Ind. 1996).

33-5-29.5-30. Nonattorney commission members — Appointment — Terms — Vacancies. — (a) On or before September 15, 1995, the Lake County board of commissioners shall appoint the four (4) nonattorney members of the commission. The term of office for each of the commissioners shall commence October 1, 1995, and expires as follows:

(1) The term of the member appointed from the first district of the Lake County board of commissioners expires September 30, 1996.

(2) The term of the member appointed from the second district expires September 30, 1997.

(3) The term of the member appointed from the third district expires September 30, 1998.

(4) The term of the member appointed by the majority vote of the Lake County board of commissioners expires September 30, 1999.

(b) One (1) month prior to the expiration of a term of office of a nonattorney commissioner, an appointment or reappointment shall be made in accordance with section 29 [IC 33-5-29.5-29] of this chapter. All appointments made by the Lake County board of commissioners shall be certified to the secretary of state, the clerk of the supreme court, and the clerk of Lake circuit court within ten (10) days of the appointment.

(c) Except as provided in subsection (a), each nonattorney member shall be appointed for a term of four (4) years.

(d) Whenever a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the Lake County board of commissioners in writing of such fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the Lake County board of commissioners within sixty (60) days after notice of the vacancy is received. The term of the nonattorney commissioner so appointed shall be for the unexpired term of the member whose vacancy the

new member has filled. [IC 33-5-29.5-30, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 69.]

33-5-29.5-31. Attorney commission members — Qualifications — Terms — Vacancies. — (a) In September 1995, and thereafter those admitted to the practice of law and residing in Lake County (hereinafter called attorney electors) shall elect four (4) of their number to the commission. To be eligible for the office of attorney commissioner a person must be on the current annual list of attorneys certified to the clerk of the Supreme Court and must be a resident of Lake County. The term of office of each elected attorney member shall be four (4) years, commencing on the first day of October following the attorney member's election. The election day is the date on which the ballots are counted, and for the purpose of this section shall be the first Tuesday in September, 1995, and every four (4) years thereafter. Thereafter, during the month prior to the expiration of each such attorney commissioner's term of office, an election shall be held to fill the succeeding four (4) year term of office.

(b) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the commission shall be filled for the unexpired term of the member creating the vacancy by a special election. [IC 33-5-29.5-31, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 70.]

33-5-29.5-32. Notice — Nomination — Ballots — Election of attorney commission members. — The attorney members of the commission shall be elected by the following process:

(a) The clerk of the Lake circuit court shall, at least ninety (90) days prior to the date of election, notify all attorneys in Lake County of the upcoming election by mail, informing them that nominations must be made to the clerk of the circuit court at least sixty (60) days prior to the election. Said clerk shall secure a list of all such attorneys and their correct addresses from the clerk of the Supreme Court of the state of Indiana, state house.

(b) A nomination in writing, accompanied by a signed petition of ten (10) attorney electors, and the written consent of the qualified nominee shall be filed by any attorney elector or group of attorney electors residing in Lake County, by mail or otherwise, in the office of the clerk of the Lake circuit court at least sixty (60) days prior to the election.

(c) The clerk of the Lake circuit court shall prepare and print ballots containing the names and residence addresses of all attorney nominees whose written nominations, petitions and written statements of consent have been received sixty (60) days prior to the election.

(1) The ballot shall read:

**“SUPERIOR COURT OF LAKE COUNTY
NOMINATING COMMISSION BALLOT**

To be cast by individuals residing in Lake County and admitted to the practice of law in Indiana. Vote for not more than four (4) of the

following candidates for the term commencing

(Name)	(Address)
(Name)	(Address)
(etc.)	(etc.)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the clerk of the Lake Circuit Court not later than

DESTROY BALLOT IF NOT USED”

- (2) The four (4) nominees receiving the most votes whose election does not conflict with the requirements of section 29(b) [IC 33-5-29.5-29(b)] of this chapter shall be elected.
- (d) The clerk shall also supply with each ballot distributed by the clerk a certificate, to be completed and signed and returned by the attorney elector voting such ballot, certifying that the attorney elector is admitted to the practice of law in Indiana, that the attorney elector resides in Lake County, and that the attorney elector voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.
- (e) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope shall not be opened until the counting of the ballots.
- (f) The clerk of the Lake Circuit Court shall mail a ballot and its accompanying material to all qualified attorney electors at least two (2) weeks before the date of election.
- (g) Upon receiving the completed ballots and the accompanying certificate, the clerk shall insure that the certificates have been completed in compliance with this chapter. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.
- (h) The clerk of the Lake Circuit Court, with the assistance of the Lake County election board, shall open and canvass all ballots after four (4) o'clock P.M. on the day of election in the office of the clerk of the Lake Circuit Court. No ballots received after four (4) o'clock P.M. are to be counted unless the chairman of the judicial nominating commission orders an extension of time because of extraordinary circumstances. Upon canvassing the ballots the clerk shall place all ballots back in their package. These, along with the certificates, shall be retained in the clerk's office for a period of six (6) months, and the clerk shall permit no one to inspect them except upon an order of the Indiana Supreme Court.
- (i) In any election held for selection of attorney members of the commission, in case two (2) or more nominees are tied so that one (1) additional vote cast for one (1) of them would give the nominee a

plurality, the canvasser shall resolve the tie by lot and the winner of the lot shall be deemed to have been elected. [IC 33-5-29.5-32, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 71.]

33-5-29.5-33. Notice of appointment or election to commission. — After the attorney members of the commission have been elected, and after the names of the non-attorney commissioners appointed by the governor have been certified to the secretary of state, clerk of the Supreme Court, and clerk of the Lake Circuit Court as this chapter so provides, the clerk of the Lake Circuit Court shall by regular mail notify the members of the commission of their election or appointment, and shall so notify the chairman of the judicial nominating commission of the same. [IC 33-5-29.5-33, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-34. Limitation on successive terms. — A member of the judicial nominating commission may serve until his successor is appointed or elected. No attorney commissioner or non-attorney commissioner shall be eligible for more than two (2) successive re-elections or reappointments. [IC 33-5-29.5-34, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-35. Vacancy in court — Notice to commission — Nomination of candidates — Meetings — Quorum — Rules. — (a) When a vacancy occurs in the superior court of Lake County, the clerk of such court shall promptly notify the chairman and each member of the commission of such vacancy. The chairman shall call a meeting of the commission within ten (10) days following such notice. The commission shall submit its nominations of three (3) candidates for each vacancy and certify them to the governor as promptly as possible, and in any event not later than sixty (60) days from the time such vacancy occurs. When it is known that a vacancy will occur at a definite future date within the term of the governor then serving, but the vacancy has not yet occurred, the clerk shall notify the chairman and each member of the commission immediately of the forthcoming vacancy and the commission may within fifty (50) days of such notice of such vacancy make its nominations and submit to the governor the names of three (3) persons nominated for such forthcoming vacancy.

(b) Meetings of the commission shall be called by its chairman, or in the event of the chairman's failure to call a necessary meeting, upon the call of any five (5) members of the commission. The chairman, whenever the chairman considers a meeting necessary, or upon the request by any five (5) members of the commission for a meeting, shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(c) Meetings of the commission are to be held at such a place in the Lake County government center in Crown Point, Indiana, or such other place, as the circuit court clerk of Lake County may arrange, at the direction of the chairman of the commission.

(d) The commission shall act only at a public meeting. IC 5-14-1.5 applies to meetings of the commission. The commission may not meet in executive

session under IC 5-14-1.5-6.1 for the consideration of a candidate for judicial appointment.

(e) The commission may act only by the concurrence of a majority of its members attending a meeting. Five (5) members are required to constitute a quorum at a meeting.

(f) The commission shall have power to adopt reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties. These rules must provide for the receipt of public testimony concerning the qualifications of candidates for nomination to the governor. [IC 33-5-29.5-35, as added by Acts 1973, P.L. 308, § 1; P.L.281-1989, § 5; P.L.1-1991, § 183; P.L.18-1995, § 72.]

33-5-29.5-36. Requirements for selection of candidates. — In selecting the three (3) nominees to be submitted to the governor, the commission shall comply with the following requirements:

(a) The commission shall submit only the names of the three (3) most highly qualified candidates from among all those eligible individuals considered. To be eligible for nomination as a judge of the Superior Court of Lake County, a person must be domiciled in the county of Lake, a citizen of the United States and admitted to the practice of law in the courts of Indiana.

(b) In abiding by the mandate in subsection (a) of this section, the commission shall evaluate in writing each eligible individual on the following factors:

(1) Law school record, including any academic honors and achievements;

(2) Contribution to scholarly journals and publications, legislative drafting, and legal briefs;

(3) Activities in public service, including:

(i) Writings and speeches concerning public or civic affairs which are on public record, including but not limited to campaign speeches or writings, letters to newspapers, and testimony before public agencies;

(ii) Government service;

(iii) Efforts and achievements in improving the administration of justice;

(iv) Other conduct relating to the individual's profession.

(4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge;

(5) Probable judicial temperament;

(6) Physical condition, including age, stamina, and possible habitual intemperance;

(7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness and dedication;

(8) Membership on boards of directors, financial interest, and any other consideration which might create conflict of interest with a judicial office;

- (9) Any other pertinent information which the commission feels is important in selecting the best qualified individuals for judicial office.
- (c) These written evaluations shall not be made on an individual until the individual states in writing that the individual desires to hold a judicial office that is or will be created by vacancy.
- (d) The political affiliations of any candidate shall not be considered by the commission in evaluating and determining which eligible candidates shall be recommended to the governor for a vacancy on the superior court of Lake County.
- (e) In determining which eligible candidates shall be recommended to the governor, the commission shall consider that racial and gender diversity enhances the quality of the judiciary. [IC 33-5-29.5-36, as added by Acts 1973, P.L. 308, § 1; P.L.18-1995, § 73.]

NOTES TO DECISIONS

Selection of Minority Judges.

The amendments to this chapter effective July 1, 1995, expanded the number of members on the Lake County judicial nominating

commission from seven to nine, and made other changes directed at increasing the likelihood of selection of minority judges. *Bradley v. Work*, 916 F. Supp. 1446 (S.D. Ind. 1996).

33-5-29.5-37. Written evaluation of candidates — Disclosure of records. — (a) The commission shall submit with the list of three (3) nominees to the governor its written evaluation of the qualifications of each candidate.

(b) The names of the nominees and the written evaluations are public records that may be inspected and copied under IC 5-14-3.

(c) Every eligible candidate whose name was not submitted to the governor shall have access to any evaluation on the candidate by the commission and the right to make such evaluation public.

(d) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1 are excepted from public disclosure, unless the records are prepared for use in the consideration of a candidate for judicial appointment. [IC 33-5-29.5-37, as added by Acts 1973, P.L. 308, § 1; P.L.281-1989, § 6; P.L.1-1991, § 184.]

Cited: *Bradley v. Work*, 916 F. Supp. 1446 (S.D. Ind. 1996).

33-5-29.5-38. Withdrawal of nominee's name — Multiple vacancies — Changes in nominations. — After the commission has nominated and submitted to the governor the names of three (3) persons for appointment to fill a vacancy of the Superior Court of Lake County, any name or names may be withdrawn for cause deemed by the commission to be of a substantial nature affecting the nominee's qualifications to hold office, and another name or names may be substituted therefor at any time before the appointment is made to fill the vacancy. If any nominee dies, or requests in writing that his name be withdrawn, the commission shall nominate another person to replace him. Whenever there are existing at the same time two (2) or more vacancies, the commission shall nominate and submit

to the governor a list of three (3) different persons for each of such vacancies. The commission may, in its discretion and before an appointment is made, withdraw the lists of nominations, change the names of any such persons nominated from one (1) list to another and resubmit them as so changed, or may substitute a new name for any of those previously nominated. [IC 33-5-29.5-38, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-39. Appointment by governor — Deadline — Appointment by chief justice. — A vacancy occurring on the Superior Court of Lake County shall be filled by appointment of the governor from a list of three (3) nominees presented to him by the judicial nominating commission. If the governor shall fail to make an appointment from the list within sixty (60) days from the day it is presented to him, the appointment shall be made by the chief justice or the acting chief justice of the Indiana Supreme Court from the same list, or altered list as provided for in section 38 [IC 33-5-29.5-38] of this chapter.

The governor shall make all such appointments to the Superior Court of Lake County without regard to the political affiliation of any of the three (3) nominees submitted to him. Further, in the interest of justice, the governor shall consider only those qualifications of the nominees included in section 36 [IC 33-5-29.5-36] of this chapter. [IC 33-5-29.5-39, as added by Acts 1973, P.L. 308, § 1.]

Cited: *Bradley v. Indiana State Election Bd.*, 797 F. Supp. 694 (S.D. Ind. 1992).

33-5-29.5-40. Effective dates of appointments. — An appointment by the governor or chief justice, as required by section 39 [IC 33-5-29.5-39], of this chapter, to the Superior Court of Lake County shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if no such vacancy yet exists at the date of appointment. [IC 33-5-29.5-40, as added by Acts 1973, P.L. 308, § 1.]

33-5-29.5-41. Terms of judges. — (a) Each judge appointed under section 39 [IC 33-5-29.5-39] of this chapter shall serve an initial term, which shall commence on the effective date of the appointment of any such judge and shall continue through December 31 in the year of the general election that follows the expiration of two (2) years from the effective date of the judge's appointment.

(b) Unless rejected by the electorate of Lake County under section 42 [IC 33-5-29.5-42] of this chapter, a judge of the civil division, criminal division, and juvenile division shall serve successive six (6) year terms.

(c) The term of office of a judge of the county division of the Lake superior court is six (6) years.

(d) Each six (6) year term commences on the first day of January following the expiration of the preceding initial term or the preceding six (6) year term, as the case may be, and shall continue for six (6) years. [IC 33-5-29.5-41, as added by Acts 1973, P.L. 308, § 1; P.L.334-1989(ss), § 19.]

Cited: *Bradley v. Work*, 916 F. Supp. 1446 (S.D. Ind. 1996).

33-5-29.5-42. Approval of judges by electorate — Election board — Form of ballot — Term of office. — (a) The question of the retention in office or rejection of each judge of the following divisions of the superior court of Lake County shall be submitted to the electorate of Lake County at the general election immediately preceding expiration of the term of such judge:

- (1) Civil division.
- (2) Criminal division.
- (3) Juvenile division.

(b) At such general election the question of the retention in office or rejection of a judge described in subsection (a) shall be submitted to the electorate of Lake County in the form prescribed by IC 3-11-2 and must state “Shall Judge (insert name) of the superior court of Lake County be retained in office for an additional term?”.

(c) If that a majority of the ballots cast by the electors voting on any such question shall be “Yes”, the judge whose name appeared on such question shall be approved for a six (6) year term commencing on January 1 following the general election as provided in section 41(b) [IC 33-5-29.5-41(b)] of this chapter.

(d) If that a majority of the ballots cast by the electors voting on any such question shall be “No”, the judge whose name appeared on such question shall be rejected. The office of the rejected judge shall be vacant on January 1 following the rejection. The vacancy shall be filled by appointment by the governor pursuant to section 39 [IC 33-5-29.5-39] of this chapter.

(e) The Lake County election board shall submit the question of the retention in office or rejection of a judge described in subsection (a) to the electorate of Lake County. The submission of the question is subject to the provisions of IC 3 that are not inconsistent with this chapter.

(f) If a judge who is appointed does not desire to serve any further term, the judge shall notify in writing the clerk of the Lake circuit court at least sixty (60) days prior to any such general election, in which case the question of that judge’s retention in office or rejection shall not be submitted to the electorate, and the office shall become vacant at the expiration of the term. [IC 33-5-29.5-42, as added by Acts 1973, P.L. 308, § 1; P.L.3-1987, § 533; P.L.334-1989(ss), § 20.]

Cited: *Bradley v. Indiana State Election Bd.*, 797 F. Supp. 694 (S.D. Ind. 1992).

33-5-29.5-42.5. Election of judge of county division. — A judge of the county division of the Lake superior court shall be elected under IC 3-10-2-11 by the electorate of Lake County. [P.L.334-1989(ss), § 21.]

33-5-29.5-43. Conditions of office of judge. — (a) A judge of the superior court of Lake County may not during a term of office as judge of the Lake superior court do any of the following:

- (1) Engage in the practice of law.
- (2) Run for elective office, unless the elective office is that of judge of the county division of the Lake superior court.
- (3) Take part in any political campaign, unless the judge is running for election as judge of the county division and the political campaign is conducted for that office.

(b) Failure to comply with this section shall be sufficient cause for the commission on judicial qualifications created by IC 33-2.1-5 to recommend to the supreme court that such judge be censured or removed.

(c) A political party shall not directly or indirectly campaign for or against a judge subject to retention or rejection under this chapter. [IC 33-5-29.5-43, as added by Acts 1973, P.L. 308, § 1; P.L.334-1989(ss), § 22; P.L.133-1992, § 33; P.L.18-1995, § 74.]

Cross References. Jurisdiction of commission on judicial qualifications, prohibitions against political activity, IC 33-2.1-6-3.

Cited: *Pruitt v. Kimbrough*, 536 F. Supp. 764 (N.D. Ind. 1982), *aff'd*, 705 F.2d 462 (7th Cir. 1983).

33-5-29.5-44 — 33-5-29.5-68. [Repealed.]

Compiler's Notes. These sections, concerning creation, operations, jurisdiction and powers of the commission on judicial qualifi-

cations for the Superior Court of Lake County, were repealed by P.L.18-1995, § 114, effective July 1, 1995.

33-5-29.5-69 [Repealed.]

Compiler's Notes. This section, concerning retirement and removal, was repealed by P.L.209-1996, § 18, effective July 1, 1996.

33-5-29.5-70. [Repealed.]

Compiler's Notes. This section, stating that a statewide judicial qualifications commission would supersede the commission es-

tablished by this chapter to serve the Superior Court of Lake County, was repealed by P.L.18-1995, § 114, effective July 1, 1995.

33-5-29.5-71. Jury commissioners — Selection of jurors — Summoning of jurors — List of jurors. — (a) The clerk of the Lake circuit court and the jury commissioners appointed by the Lake circuit court shall serve as jury commissioners for this court. The issuing and servicing of process shall be governed by the procedure specified in IC 33-4-5-2 for the circuit court. The selection of jurors may be made either:

- (1) As specified for the circuit court in IC 33-4-5-2; or
- (2) From a list of persons in the county who are at least eighteen (18) years of age and who hold a valid license issued by the bureau of motor vehicles under IC 9-24.

(b) The jurors need not serve in any particular order in which they are drawn by the jury commissioners.

(c) Any judge of the court may order the selection and summoning of other jurors for the court whenever necessary. The jurors summoned under this subsection shall serve the entire court and before any judge of the court where their service may be required.

(d) The contractor operating a license branch under IC 9-16 for Lake County shall, not later than January 1 of each year, provide to the jury commissioners of the Lake superior courts a list of all persons at least eighteen (18) years of age who hold a valid license issued by the bureau of motor vehicles. [P.L.237-1993, § 1.]

CHAPTER 30

LAKE SUPERIOR COURT — FURTHER PROVISIONS

33-5-30-1 — 33-5-30-6. [Repealed.]

Compiler's Notes. This chapter, concerning the judges, clerk, sheriff and reporters of the Lake Superior Court, was repealed by Acts 1973, P.L. 308, § 2.

CHAPTER 31

LAPORTE SUPERIOR COURT NO. 1

33-5-31-1 — 33-5-31-8. [Repealed.]

Compiler's Notes. This chapter, concerning LaPorte Superior Court No. 1, was repealed by P.L.186-1986, § 24. For present provisions relating to the LaPorte Superior Courts, see IC 33-5-31.1.

CHAPTER 31.1

LAPORTE SUPERIOR COURTS

SECTION.

- 33-5-31.1-1. Courts created — Seals.
- 33-5-31.1-2. Judges.
- 33-5-31.1-3. Jurisdiction.
- 33-5-31.1-4. Powers of judges.
- 33-5-31.1-5. Bailiff and court reporter.
- 33-5-31.1-6. Books.
- 33-5-31.1-7. Sessions — Rooms and facilities.
- 33-5-31.1-8. Jury commissioners.

SECTION.

- 33-5-31.1-9. Transfer of actions or proceedings.
- 33-5-31.1-10. Authority of circuit and superior court judges to sit in either court.
- 33-5-31.1-11. Standard small claims and misdemeanor division.
- 33-5-31.1-12. Appointment of magistrate.

33-5-31.1-1. Courts created — Seals. — There are established four (4) courts of record to be known as the LaPorte superior courts No. 1, No. 2, No. 3, and No. 4 (referred to as the courts in this chapter). Each court may have a seal containing the words "LaPorte Superior Court (insert No. 1, No. 2, No. 3, or No. 4), LaPorte County, Indiana." LaPorte County comprises the judicial district of the courts. [P.L.186-1986, § 19.]

33-5-31.1-2. Judges. — (a) Each court has one (1) judge, who shall be elected at the general election every six (6) years in LaPorte County. Each judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

- (b) To be eligible to hold office as judge of any of the courts, a person must:
- (1) Be a resident of LaPorte County; and
 - (2) Be admitted to the bar of Indiana.

[P.L.186-1986, § 19.]

33-5-31.1-3. Jurisdiction. — The courts have the same jurisdiction as the LaPorte circuit court. [P.L.186-1986, § 19.]

Cross References. Circuit courts, jurisdiction, IC 33-4-4-3.

NOTES TO DECISIONS

ANALYSIS

Assault and battery.
Claims under federal statute.

Assault and Battery.

Under former IC 33-5-31-4, the Superior Court of LaPorte County, in a prosecution for assault and battery committed in the county, had jurisdiction of the persons and the subject matter of the offense, where the accused ap-

peared personally and by counsel at the bar of the court and entered a plea of guilty. *Nahas v. State*, 215 Ind. 614, 21 N.E.2d 140 (1939).

Claims Under Federal Statute.

State courts of general jurisdiction are not free to deny enforcement of claims growing out of a valid federal statute. *Colvin v. Bowen*, 74 Ind. Dec. 1, 399 N.E.2d 835 (Ind. App. 1980).

33-5-31.1-4. Powers of judges. — The judge of each court has the same powers relating to the conduct of the business of the court as the judge of the LaPorte circuit court. The judge of each court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.186-1986, § 19.]

33-5-31.1-5. Bailiff and court reporter. — The judge of each court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the LaPorte circuit court. Their salaries shall be paid monthly out of the treasury of LaPorte County as provided by law. [P.L.186-1986, § 19.]

33-5-31.1-6. Books. — The clerk of the courts, under the direction of the judge of each court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for each court, which shall be kept separately from the books and papers of other courts. [P.L.186-1986, § 19.]

33-5-31.1-7. Sessions — Rooms and facilities. — LaPorte superior court No. 1 shall hold its sessions in Michigan City, Indiana. LaPorte superior courts No. 2, No. 3, and No. 4 shall hold sessions in places in the county as the LaPorte County executive may provide. The county executive shall provide and maintain suitable courtrooms and other rooms and facilities, including furniture and equipment, as may be necessary. The LaPorte County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.186-1986, § 19.]

NOTES TO DECISIONS

In General.

Where, at meeting on April 24, 1965, motion was made to locate court in Michigan City and minutes showed the vote to be four

votes for LaPorte and three for Michigan City, such minutes were ambiguous and the passage of a motion on July 25, 1966, reciting a technical error in the previous vote and estab-

In General. (Cont'd)

lishing the court at Michigan City was valid.
State ex rel. Wineholt v. LaPorte Superior

Court No. 2, 249 Ind. 152, 230 N.E.2d 92, 11
Ind. Dec. 360 (1967) (decided under former IC
33-5-32-4).

33-5-31.1-8. Jury commissioners. — The jury commissioners appointed by the judge of the LaPorte circuit court shall serve as the jury commissioners for the courts. Juries shall be selected in the same manner as juries for the LaPorte circuit court. The grand jury selected for the LaPorte circuit court shall also serve as the grand jury for the superior courts as may be necessary. [P.L.186-1986, § 19.]

33-5-31.1-9. Transfer of actions or proceedings. — The judge of the LaPorte circuit court may, with the consent of the judge of the receiving court, transfer any action or proceeding from the circuit court to any of the courts. The judge of any of the courts may, with consent of the judge of the circuit or another superior court, transfer any action or proceeding from the court to the circuit court or to another superior court. However, a judge of LaPorte superior courts No. 3 and No. 4 may not transfer any action or proceeding docketed in the small claims and misdemeanor division to the LaPorte circuit court or LaPorte superior court No. 1 or No. 2. [P.L.186-1986, § 19.]

NOTES TO DECISIONS

ANALYSIS

Challenge to transfer.
Construction with other laws.

raised the issue at the first opportunity presented on direct appeal. *Beason v. State*, 690 N.E.2d 277 (Ind. 1998).

Challenge to Transfer.

Defendant who pled guilty did not waive his right to challenge the jurisdiction of the circuit court over the charges against him, where he filed a motion in opposition to the state's affidavit to transfer, sought an interlocutory order to appeal the transfer, and

Construction with Other Laws.

Transfer of charges against defendant from superior court to circuit court, initiated under this section, was neither a change of judge nor a change of venue, and was not subject to CR. 12. *Beason v. State*, 690 N.E.2d 277 (Ind. 1998).

33-5-31.1-10. Authority of circuit and superior court judges to sit in either court. — The judge of the LaPorte circuit court may, with the consent of the judge of any of the courts, sit as a judge of the court in any matter as if an elected judge of that court. The judge of any of the courts may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.186-1986, § 19.]

33-5-31.1-11. Standard small claims and misdemeanor division. — LaPorte superior courts No. 3 and No. 4 each have a standard small claims and misdemeanor division. [P.L.186-1986, § 19.]

33-5-31.1-12. Appointment of magistrate. — (a) The judges of the court may, by a vote of the majority of the judges, appoint one (1) full-time magistrate under IC 33-4-7.

(b) The magistrate continues in office until removed by the vote of a majority of the judges of the court. [P.L.18-1995, § 75.]

CHAPTER 32

LAPORTE SUPERIOR COURT NO. 2

33-5-32-1 — 33-5-32-10. [Repealed.]

Compiler's Notes. This chapter, concerning LaPorte Superior Court No. 2, was repealed by P.L.186-1986, § 24. For present law on LaPorte Superior Courts, see IC 33-5-31.1.

CHAPTER 32.5

LAWRENCE SUPERIOR COURT

SECTION.

- 33-5-32.5-1. Court established.
- 33-5-32.5-2. Name.
- 33-5-32.5-3. Seal.
- 33-5-32.5-4. Jurisdiction.
- 33-5-32.5-5. Court of record.
- 33-5-32.5-6. Rules of court — Incidental powers of judge.
- 33-5-32.5-7. Orders, injunctions and writs — Other powers of judge.
- 33-5-32.5-8. Location of sessions — Facilities provided by board of commissioners — Appropriation.
- 33-5-32.5-9 — 33-5-32.5-11. [Repealed.]
- 33-5-32.5-12. Books, papers and records.
- 33-5-32.5-13. Bailiff — Court reporter.
- 33-5-32.5-14. Laws and rules governing circuit court applicable.

SECTION.

- 33-5-32.5-15. Selection of jurors.
- 33-5-32.5-16. [Repealed.]
- 33-5-32.5-17. Appeals.
- 33-5-32.5-18. Appointment of personnel.
- 33-5-32.5-19. Rules of court.
- 33-5-32.5-20. Transfer of cases from circuit court.
- 33-5-32.5-21. Transfer of cases to circuit court.
- 33-5-32.5-22. Authority of circuit judge to sit in superior court.
- 33-5-32.5-23. Judge — Election — Term.
- 33-5-32.5-24. Commission of judge — Vacancy.
- 33-5-32.5-25. Power and authority of court.

33-5-32.5-1. Court established. — There shall be and is hereby established a superior court in Lawrence County, Indiana, which shall consist of two (2) judges. Each judge shall hold office for six (6) years and until the judge's successor shall have been elected and qualified. [IC 33-5-32.5-1, as added by Acts 1973, P.L. 309, § 1; 1976, P.L. 133, § 21; P.L.18-1995, § 76.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1. Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-32.5-2. Name. — The court shall be named and styled Lawrence Superior Court. [IC 33-5-32.5-2, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-3. Seal. — The court shall have a seal consisting of a circular disk containing the words "Lawrence Superior Court," an impression of which shall be spread of record upon the order book of the court. [IC 33-5-32.5-3, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-4. Jurisdiction. — (a) Except as provided in subsection (b), the superior court for the county has original and concurrent jurisdiction with the circuit court in the following:

- (1) All civil actions and proceedings at law and in equity.

- (2) Actions for divorce, separation, or annulment of marriage.
- (3) All criminal cases and proceedings.
- (b) The superior court does not have the following:
 - (1) Jurisdiction of a juvenile court.
 - (2) Jurisdiction in probate and other matters provided for by IC 29-1.However, the court has concurrent jurisdiction with the circuit court as to civil actions by or against personal representatives.
- (c) The superior court for the county has original and concurrent jurisdiction in all appeals or reviews from boards of county commissioners, or other executive or administrative agencies or inferior courts, and other appellate jurisdiction vested in the circuit court.
- (d) The superior court has a standard small claims and misdemeanor division. [IC 33-5-32.5-4, as added by Acts 1973, P.L. 309, § 1; 1981, P.L. 272, § 67; P.L.1-1990, § 320; P.L.18-1995, § 77.]

33-5-32.5-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-32.5-5, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-6. Rules of court — Incidental powers of judge. — Each judge of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. Each judge shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. [IC 33-5-32.5-6, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 78.]

Cross References. Commencement of actions and issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-32.5-7. Orders, injunctions and writs — Other powers of judge. — Each judge of the court shall have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writs of habeas corpus and of mandate and prohibition, to appoint receivers, masters, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof. [IC 33-5-32.5-7, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 79.]

33-5-32.5-8. Location of sessions — Facilities provided by board of commissioners — Appropriation. — The superior court of Lawrence County shall hold its sessions in the Lawrence County courthouse in the city of Bedford, Indiana, or in such other convenient and suitable place as the

board of county commissioners of Lawrence County shall provide. Said board of county commissioners shall provide and maintain a suitable and convenient courtroom for the holding of the court, with a suitable and convenient jury room and offices for the judge and official court reporter, which rooms shall be ready for occupancy by January 1, 1974, and the county council shall meet and appropriate all necessary funds therefor. [IC 33-5-32.5-8, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-9 — 33-5-32.5-11. [Repealed.]

Compiler's Notes. These sections, concerning salary of judge, clerk and sheriff and fees, were repealed by P.L.171-1984, § 80.

33-5-32.5-12. Books, papers and records. — The clerk, under the direction of the judges, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for the court, and all books, papers, and proceedings of each court shall be kept distinct and separate from those of other courts. [IC 33-5-32.5-12, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 80.]

33-5-32.5-13. Bailiff — Court reporter. — Each judge shall appoint a bailiff and court reporter whose duties, salary, and term shall be regulated in the same manner as provided for the circuit court. [IC 33-5-32.5-13, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 81.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

33-5-32.5-14. Laws and rules governing circuit court applicable. — All laws and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [IC 33-5-32.5-14, as added by Acts 1973, P.L. 309, § 1.]

Cross References. Change from county, venue, procedure, costs, IC 34-35-1-2. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-5-32.5-15. Selection of jurors. — Prior to the commencement of any term of the court, at the time and place provided by law, the clerk of the court and jury commissioners appointed by the judge of the circuit court of said county as provided by law, shall proceed to select a petit jury, in the manner as is now provided by law, to serve at the next ensuing term of court, and the officers in selecting, and the clerk, in issuing process for, the jury, and the sheriff in serving the same, shall in all things be governed by the

rules and regulations prescribed for the selection of petit jurors in the circuit court: Provided, That the court may order on what day of the term the jurors shall be summoned to attend the court. The judge of the court may order the selecting and summoning of other jurors for the court whenever the same may be necessary. [IC 33-5-32.5-15, as added by Acts 1973, P.L. 309, § 1.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Jury commissioners, IC 33-4-5-1 — IC 33-4-5-9.

Selection, qualification, and summoning of

jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

Collateral References. Prospective juror's connection with insurance company as ground for challenge for cause. 9 A.L.R.5th 102.

33-5-32.5-16. [Repealed.]

Compiler's Notes. This section, concerning fees for jurors and witnesses, was re-

pealed by P.L.171-1984, § 80. For present law, see IC 33-1-19-4 — IC 33-1-19-6.

33-5-32.5-17. Appeals. — Any party may appeal to the Supreme Court or Court of Appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. [IC 33-5-32.5-17, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-18. Appointment of personnel. — Each judge shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of his duties as judge of the court. [IC 33-5-32.5-18, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 82.]

33-5-32.5-19. Rules of court. — The court shall adopt rules to provide for the operation and conduct of the court. [IC 33-5-32.5-19, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-20. Transfer of cases from circuit court. — The judge of the circuit court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [IC 33-5-32.5-20, as added by Acts 1973, P.L. 309, § 1.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-32.5-21. Transfer of cases to circuit court. — Each judge of this court may, with the consent of the judge of the circuit court, transfer any action, cause, or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause, or proceeding without further transcript thereof to be

redocketed and disposed of as if originally filed with the circuit court. [IC 33-5-32.5-21, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 83.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-1.

33-5-32.5-22. Authority of circuit judge to sit in superior court. — The judge of the Lawrence County Circuit Court shall be, at his discretion and with the court's permission, authorized to sit and to act as a judge of this court in all matters pending before this court, without limitation and without any further order in the same manner and stead as if he were a judge of this court, with all the rights and powers as if he were a duly elected judge of this court. [IC 33-5-32.5-22, as added by Acts 1973, P.L. 309, § 1.]

33-5-32.5-23. Judge — Election — Term. — A judge for this court shall be elected every six (6) years at the general election. The term of office shall begin the first day of January following his election and continue for six (6) years and until his successor is elected and qualified. [IC 33-5-32.5-23, as added by Acts 1973, P.L. 309, § 1; 1976, P.L. 133, § 22.]

Cross References. Admission to practice of law as qualification, IC 33-13-9-1. Commencement and expiration of terms of office, IC 33-13-5-1.

33-5-32.5-24. Commission of judge — Vacancy. — Each judge of the Lawrence County Superior Court as created by this chapter shall be commissioned by the governor in the same manner as a judge of the circuit court, and any vacancy occurring in the office of judge of the court shall be filled by appointment by the governor in the same manner as vacancies in the office of the judge of the circuit court. [IC 33-5-32.5-24, as added by Acts 1973, P.L. 309, § 1; P.L.18-1995, § 84.]

Cross References. Vacancies in the office of judge filled by governor, Ind. Const., Art. 5, § 18.

33-5-32.5-25. Power and authority of court. — Except as limited by this chapter, the court shall be a court of record and of general jurisdiction at law and equity, and its judgments, decrees, orders and proceedings shall have the same force and effect as to causes, proceedings and matters within its jurisdiction as those of the circuit court and shall be enforced in the same manner. [IC 33-5-32.5-25, as added by Acts 1973, P.L. 309, § 1.]

CHAPTER 33

MADISON SUPERIOR COURT

33-5-33-1 — 33-5-33-20. [Repealed.]

Compiler's Notes. These sections, concerning the Madison Superior Court, were repealed by Acts 1976, P.L. 135, § 3. For

present law, see IC 33-5-33.1-1 — IC 33-5-33.1-24.

CHAPTER 33.1

MADISON SUPERIOR COURT

SECTION.

- 33-5-33.1-1. Court established — Judges — Terms.
 33-5-33.1-2. Name of court.
 33-5-33.1-3. Seal.
 33-5-33.1-4. Jurisdiction.
 33-5-33.1-5. Court of record — Enforcement of judgments.
 33-5-33.1-6. Powers of judges.
 33-5-33.1-7. Powers same as circuit court judges.
 33-5-33.1-8. Court officers — Appointment — Salaries.
 33-5-33.1-9. Where court held — Provision by county commissioners.

SECTION.

- 33-5-33.1-10 — 33-5-33.1-13. [Repealed.]
 33-5-33.1-14. Records of court.
 33-5-33.1-15. Order-books — Signature of judge.
 33-5-33.1-16. Procedure — Rules.
 33-5-33.1-17. Jury commissioners — Jurors.
 33-5-33.1-18. [Repealed.]
 33-5-33.1-19. Appeals.
 33-5-33.1-20. Transfers from circuit court.
 33-5-33.1-21. Transfers to circuit court.
 33-5-33.1-22. Circuit court judge sitting as judge of superior court.
 33-5-33.1-23. Chief judge.
 33-5-33.1-24. Docketing of cases.

33-5-33.1-1. Court established — Judges — Terms. — There is hereby established a superior court in Madison County, Indiana, (referred to as the “superior court” in this chapter) which court shall consist of three (3) judges, who shall hold their office for six (6) years and until their successors have been elected and qualified. In addition to the three (3) judges the judge of the Madison Circuit Court (referred to as the “circuit court” in this chapter) may sit as a judge of the superior court as hereinafter provided in this chapter. [IC 33-5-33.1-1, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-2. Name of court. — The court shall be named and styled Madison Superior Court. [IC 33-5-33.1-2, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-3. Seal. — The court shall have a seal consisting of a circular disc containing the words “Madison Superior Court”, and such design as the court may determine, an impression of which shall be spread of record upon the order-book of the court. [IC 33-5-33.1-3, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-4. Jurisdiction. — The court, within and for the county, shall have original and appellate jurisdiction, concurrent and coextensive with the circuit court in all civil, probate and criminal cases and jurisdiction concurrent and coextensive with the circuit court in all cases of appeal from boards of county commissioners and city courts. The superior court shall have original and exclusive juvenile jurisdiction. [IC 33-5-33.1-4, as added by Acts 1976, P.L. 135, § 1.]

Cited: *Blake v. Blake*, 181 Ind. App. 304, 70 Ind. Dec. 399, 391 N.E.2d 848 (1979); *Neff v. Taylor*, 456 N.E.2d 1045 (Ind. App. 1983).

NOTES TO DECISIONS

ANALYSIS

In general.
Guardianship.
Mental health investigation.
Partition.
Probate.

In General.

Since the amendment of the constitution in 1881, the same jurisdiction may be conferred on superior courts as is conferred on circuit courts. *Board of Comm'rs v. Albright*, 168 Ind. 564, 81 N.E. 578 (1907).

Even before the amendment of the constitution, the legislature had power under the constitution to establish superior courts that had jurisdiction inferior to that possessed by circuit courts. *Vickery v. Chase*, 50 Ind. 461 (1875); *Smith v. Smith*, 77 Ind. 80 (1881); *Sauer v. Twining*, 81 Ind. 366 (1881); *Stevens v. Anderson*, 145 Ind. 304, 44 N.E. 460 (1896).

Guardianship.

The superior court of Madison County had jurisdiction of a petition for the appointment of a guardian of an incompetent, notwithstanding proceedings in Madison Superior Court No. 2 for an investigation of mental health. *State ex rel. Schrenker v. Superior Court*, 242 Ind. 171, 177 N.E.2d 594 (1961).

Mental Health Investigation.

Superior Court No. 2 of Madison County

had jurisdiction of an application for the investigation of mental health where such petition did not request the appointment of a guardian but only that the party be confined in a place of safekeeping until trial court could determine whether or not she was mentally ill. *State ex rel. Schrenker v. Superior Court*, 242 Ind. 171, 177 N.E.2d 594 (1961).

Partition.

The Madison Superior Court had jurisdiction of an action for partition. *Hancock v. Maynard*, 72 Ind. App. 661, 126 N.E. 451 (1920).

Probate.

Where suit to contest will was filed in the superior court of Madison County, in which court the will had previously been admitted to probate, and the action to contest the will was given a civil cause number, but thereafter the court on its own motion transferred the action to contest to the estate number under which the will was probated, and the contest action was then venued to another county, prohibition would not lie to prevent such court from taking jurisdiction on the ground that the complaint to contest the will must be filed in the estate proceedings and not as a separate civil action. *State ex rel. Townsend v. Tipton Circuit Court*, 242 Ind. 226, 177 N.E.2d 590 (1961).

33-5-33.1-5. Court of record — Enforcement of judgments. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-33.1-5, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-6. Powers of judges. — The judges of the court may make rules for conducting the business of the court and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges may administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and give all necessary certificates for the authentication of the records and proceedings in the court. [IC 33-5-33.1-6, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-7. Powers same as circuit court judges. — The judges of the court shall have the same powers to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus and to grant commissions for the examination of witnesses, and to appoint other officers necessary to transact the business of the court as is conferred on circuit

courts or the circuit court judges. [IC 33-5-33.1-7, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-8. Court officers — Appointment — Salaries. — The court may appoint bailiffs, court reporters, probation officers, and such other personnel, including an administrative officer, as necessary to transact the business of the court. The salaries of the personnel shall be fixed and paid as provided by law. However, if the salaries of any of the personnel are not provided by law, the amount and time of payment of such salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor upon the order of the court, and be entered of record. The officers and persons so appointed shall perform such duties as are prescribed by the court. Personnel appointed by the court serve at the pleasure of the court. [IC 33-5-33.1-8, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-9. Where court held — Provision by county commissioners. — The court shall hold its sessions in the Madison County courthouse, or its replacement, in the city of Anderson. The board of county commissioners of Madison County shall provide and maintain in the courthouse suitable and convenient courtrooms, jury rooms and offices for the judges, secretaries and official court reporters, and other facilities as necessary. The board of county commissioners shall provide all the necessary furniture and equipment for the rooms and offices of the court. [IC 33-5-33.1-9, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-10 — 33-5-33.1-13. [Repealed.]

Compiler's Notes. These sections, concerning salary of judges, clerk and sheriff and their duties and fees, were repealed by P.L.171-1984, § 80.

33-5-33.1-14. Records of court. — The clerk, under the direction of the court, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for the court. All books, papers and proceedings of the court shall be kept separate from those of other records. [IC 33-5-33.1-14, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-15. Order-books — Signature of judge. — The court shall maintain the order-book, and other books as the court may determine necessary for the entire court, which order-book or books may be signed on behalf of the court by any of the sitting judges of the court. Such a signature is due authentication of the actions of each of the judges in the court. [IC 33-5-33.1-15, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-16. Procedure — Rules. — All laws of the state of Indiana and all rules duly adopted by the Supreme Court of Indiana governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county,

adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court govern the superior court. [IC 33-5-33.1-16, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-17. Jury commissioners — Jurors. — The clerk of the circuit court and the jury commissioners appointed by the circuit court shall serve as jury commissioners for the superior court. However, jurors need not serve in any particular order in which they are drawn by the jury commissioners. In addition, any judge of the court may order the selection and summoning of other jurors for the court whenever necessary, and they shall serve the entire court and before any judge of the court where their service may be required. [IC 33-5-33.1-17, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-18. [Repealed.]

Compiler's Notes. This section, concerning juror and witness fees, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-33.1-19. Appeals. — Any party may appeal to the Supreme Court or the Court of Appeals from any order or judgment of the court in any case where an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law and rules governing appeals to the Supreme Court and the Court of Appeals. [IC 33-5-33.1-19, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-20. Transfers from circuit court. — The judge of the circuit court may, with the consent of the superior court, transfer any action, cause or proceeding filed and docketed in the circuit court to the superior court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript, to be redocketed and disposed of as if originally filed with the superior court. [IC 33-5-33.1-20, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-21. Transfers to circuit court. — Any judge of the superior court may, with the consent of the judge of the circuit court, transfer any action, cause or proceeding filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript, to be redocketed and disposed of as if originally filed with the circuit court. [IC 33-5-33.1-21, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-22. Circuit court judge sitting as judge of superior court. — The judge of the circuit court may sit as a judge of the superior court, with the court's permission, in all matters pending before the court, without limitation and without any further order, in the same manner as if he were an elected judge of the court. [IC 33-5-33.1-22, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-23. Chief judge. — The superior court may designate by rule one (1) of the judges as chief judge and fix the time he shall preside. The chief judge shall be responsible for the operation and conduct of the court. [IC 33-5-33.1-23, as added by Acts 1976, P.L. 135, § 1.]

33-5-33.1-24. Docketing of cases. — (a) The superior court shall provide by rule that all cases filed in the court be assigned to a particular docket, such as civil, probate, criminal, juvenile or small claims. The responsibility for processing the cases on each of these dockets shall be assigned to the judges of the court under the rules adopted by the court.

(b) The chief judge may reassign the dockets of the court from one (1) judge to another and may alter the number of judges responsible for the various dockets where efficiency so demands. [IC 33-5-33.1-24, as added by Acts 1976, P.L. 135, § 1.]

CHAPTER 34

MADISON SUPERIOR COURT NO. 2

33-5-34-1 — 33-5-34-25. [Repealed.]

Compiler's Notes. This chapter, concerning Madison Superior Court No. 2, was repealed by Acts 1976, P.L. 135, § 3. For present law, see IC 33-5-33.1.

CHAPTER 35

MARION SUPERIOR COURT

33-5-35-1 — 33-5-35-11. [Repealed.]

Compiler's Notes. This chapter, concerning the Marion Superior Court, was repealed by Acts 1975, P.L. 308, § 2. For present law, see IC 33-5-35.1.

CHAPTER 35.1

MARION SUPERIOR COURT

33-5-35.1-1 — 33-5-35.1-28. [Repealed.]

Compiler's Notes. This chapter, concerning the Marion Superior Court, was repealed by P.L.16-1995, § 15, effective January 1, 1996. For present similar provisions, see IC 33-5.1. IC 33-5-35.1-18, concerning juror and witness fees, was also repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

CHAPTER 35.5

MARSHALL SUPERIOR COURT

SECTION.

- 33-5-35.5-1. Court created — Judge — Term — Election.
- 33-5-35.5-2. Name — Seal.
- 33-5-35.5-3. Jurisdiction.
- 33-5-35.5-4. Rules and regulations — Incidental powers of judge.

SECTION.

- 33-5-35.5-5. Process — Authority of court.
- 33-5-35.5-6. Term of court.
- 33-5-35.5-7. [Repealed.]
- 33-5-35.5-8. Bailiff and court reporter.
- 33-5-35.5-9. [Repealed.]
- 33-5-35.5-10. Records and papers.

SECTION.

- 33-5-35.5-11. Location of sessions — Facilities provided by board of commissioners — Appropriation.
- 33-5-35.5-12. Jury commissioners — Petit jury, selection and attendance — Grand jury.
- 33-5-35.5-13. [Repealed.]
- 33-5-35.5-14. Laws and rules applicable to court.

SECTION.

- 33-5-35.5-15. Appeals.
- 33-5-35.5-16. Transfer of cases from and to circuit court.
- 33-5-35.5-17. Authority of circuit judge to sit in superior court.
- 33-5-35.5-18. Standard small claims misdemeanor division.

33-5-35.5-1. Court created — Judge — Term — Election. —

(a) There is created a superior court No. 1 in and for the county of Marshall, Indiana, which has one (1) judge, who shall hold office for a term of six (6) years, beginning on January 1 after election and ending December 31 following the election of the judge's successor. Every six (6) years, the voters of Marshall County shall elect at the general election a judge for the superior court No. 1.

(b) There is also created a superior court No. 2 in Marshall County, which has one (1) judge, who shall hold office for a term of six (6) years, beginning on January 1 after election and ending December 31 following the election of the judge's successor. Every six (6) years, the voters of Marshall County shall elect at the general election a judge for the superior court No. 2.

(c) To be eligible to hold office as judge of either court, a person must:

- (1) Be a resident of Marshall County;
- (2) Be less than seventy (70) years of age at the time of taking office; and
- (3) Be admitted to the practice of law in Indiana.

[IC 33-5-35.5-1, as added by Acts 1973, P.L. 310, § 1; 1976, P.L. 133, § 23; P.L.176-1988, § 12.]

Cross References. Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-35.5-2. Name — Seal. — The superior courts created by this chapter shall be referred to in this chapter as "the courts." Marshall County comprises the judicial district of each court. Each court shall be a court of record of general jurisdiction, and may have a seal containing the words "Superior Court of Marshall County, Indiana." [IC 33-5-35.5-2, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 13.]

33-5-35.5-3. Jurisdiction. — The courts have the same jurisdiction as the Marshall circuit court. [IC 33-5-35.5-3, as added by Acts 1973, P.L. 310, § 1; 1978, P.L. 136, § 46; P.L.176-1988, § 14.]

33-5-35.5-4. Rules and regulations — Incidental powers of judge. — The judge of each court has the same powers relating to the conduct of the business of the court as the judge of the Marshall circuit court. The judge of each court also may administer oaths, solemnize marriages, and take and certify acknowledgement of deeds. [IC 33-5-35.5-4, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 15.]

33-5-35.5-5. Process — Authority of court. — (a) The courts may issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals, which shall be necessary in exercising the jurisdiction hereby conferred and for the regular execution of this chapter, and may make all proper judgments, sentences, decrees, orders, and injunctions as may be necessary to carry into effect the same in conformity with the laws of this state.

(b) The process of the courts shall have the seal affixed, be attested, directed, served, returned, and be in form as is provided for process issuing from the circuit court. [IC 33-5-35.5-5, as added by Acts 1973, P.L. 310, § 1; 1981, P.L. 272, § 70; P.L.176-1988, § 16.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-35.5-6. Term of court. — The term of court of each superior court shall be the calendar year, and the judge shall have the same power to act in all matters and proceedings through the entire calendar year. [IC 33-5-35.5-6, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 17.]

Cross References. Term and vacation time of all courts abolished, IC 33-1-6-1 — IC 33-1-6-5.

33-5-35.5-7. [Repealed.]

Compiler's Notes. This section, concerning salary of judge, was repealed by P.L.171-1984, § 80.

33-5-35.5-8. Bailiff and court reporter. — The judge of each court shall appoint a bailiff and an official court reporter for the court. The salaries of the bailiff and court reporter shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Marshall circuit court. The salaries shall be paid monthly out of the treasury of Marshall County as provided by law. [IC 33-5-35.5-8, as added by Acts 1973, P.L. 310, § 1; P.L.171-1984, § 41; P.L.176-1988, § 18.]

Cross References. Salary of bailiff, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-35.5-9. [Repealed.]

Compiler's Notes. This section, concerning fees, was repealed by P.L.171-1984, § 80. For present law on court costs, see IC 33-19.

33-5-35.5-10. Records and papers. — The clerk of the courts, under the direction of each judge, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for each court, and all books, papers, and proceedings of

each court shall be kept distinct and separate from those of other courts. [IC 33-5-35.5-10, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 19.]

33-5-35.5-11. Location of sessions — Facilities provided by board of commissioners — Appropriation. — The superior court No. 1 shall hold its sessions in the Marshall County courthouse in the city of Plymouth, Indiana. The superior court No. 2 shall hold sessions in a place in the county as the board of county commissioners may provide. The board of county commissioners of Marshall County shall provide and maintain suitable and convenient courtrooms and other rooms and facilities as may be necessary. The board of county commissioners shall also provide all necessary furniture, equipment, offices and facilities. The county council shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [IC 33-5-35.5-11, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 20.]

33-5-35.5-12. Jury commissioners — Petit jury, selection and attendance — Grand jury. — The jury commissioners appointed by the judge of the Marshall circuit court shall serve as jury commissioners for the superior courts. Jurors shall be selected in the same manner as jurors for the Marshall circuit court. The grand jury selected for the Marshall circuit court shall also serve as the grand jury for the superior courts as may be necessary. [IC 33-5-35.5-12; as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 21.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.	Selection, qualification and summoning of jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.
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33-5-35.5-13. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed	by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.
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33-5-35.5-14. Laws and rules applicable to court. — All laws and rules duly adopted by the supreme court of Indiana governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and the selection of jurors for the court shall be applicable to and govern the courts established by this chapter. [IC 33-5-35.5-14, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 22.]

Cross References. Change of venue from county, procedure, costs, IC 34-35-1-2.	Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.
Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.	Judges pro tempore, IC 34-35-1-4.

33-5-35.5-15. Appeals. — Any party may appeal to the supreme court or the court of appeals from any order or judgment of either court in any case where an appeal may be had from a similar order or judgment of the circuit

court. The appeals shall be governed by the law governing appeals from the circuit court to the court of appeals and supreme courts. [IC 33-5-35.5-15, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 23.]

33-5-35.5-16. Transfer of cases from and to circuit court. — The judge of the circuit court may, with the consent of either of the superior courts, transfer any action, cause, or proceeding filed and docketed in the circuit court to that superior court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript, to be redocketed and disposed of as if originally filed with the superior court. The judge of either superior court may, with the consent of the judge of the circuit court, transfer any action, cause, or proceeding filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript, to be redocketed and disposed of as if originally filed with the circuit court. [IC 33-5-35.5-16, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 24.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

NOTES TO DECISIONS

Procedural Requirements.

Where case was transferred from the circuit to superior court under this section it was not necessary that the procedural requirements

for a change of venue from the judge be met, notwithstanding the change was suggested by the prosecutor. *Lock v. State*, 273 Ind. 315, 403 N.E.2d 1360, 75 Ind. Dec. 725 (1980).

33-5-35.5-17. Authority of circuit judge to sit in superior court. — The judge of the Marshall circuit court may, with the consent of the judge of either of the superior courts, sit as judge of a superior court in any matter as if an elected judge of that court. The judge of either of the superior courts may, with the consent of the judge of the circuit court, sit as a judge of the circuit court as if an elected judge of the circuit court. [IC 33-5-35.5-17, as added by Acts 1973, P.L. 310, § 1; P.L.176-1988, § 25.]

33-5-35.5-18. Standard small claims misdemeanor division. — The superior court No. 2 has a standard small claims and misdemeanor division. [P.L.176-1988, § 26.]

CHAPTER 35.8

MIAMI SUPERIOR COURT

SECTION.

- 33-5-35.8-1. Creation — Seal.
- 33-5-35.8-2. Number of judges — Election — Term — Eligibility for office.
- 33-5-35.8-3. Jurisdiction.
- 33-5-35.8-4. Powers of judge.
- 33-5-35.8-5 — 33-5-35.8-8. [Repealed.]
- 33-5-35.8-9. Bailiff — Official court reporter.

SECTION.

- 33-5-35.8-10. Order books, judgment dockets, execution dockets, fee books and other books.
- 33-5-35.8-11. Location of sessions — Rooms and facilities.
- 33-5-35.8-12. Jury commissioners — Selection of juries — Grand jury.

SECTION.

33-5-35.8-13. [Repealed.]

33-5-35.8-14. Transfer of actions.

33-5-35.8-15. Circuit court judge sitting as judge of court — Judge sitting

SECTION.

as judge of circuit court.

33-5-35.8-16. Standard small claims and misdemeanor division.

33-5-35.8-1. Creation — Seal. — There is established a court of record to be known as the Miami Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Miami Superior Court, Miami County, Indiana.” Miami County comprises the judicial district of the court. [IC 33-5-35.8-1, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-2. Number of judges — Election — Term — Eligibility for office. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Miami County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Miami County;

(2) Be under seventy (70) years of age at the time he takes office; and

(3) Be admitted to the bar of Indiana.

[IC 33-5-35.8-2, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-3. Jurisdiction. — The court has the same jurisdiction as the Miami Circuit Court. [IC 33-5-35.8-3, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Miami Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-35.8-4, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-5 — 33-5-35.8-8. [Repealed.]

Compiler’s Notes. These sections, concerning salary of judge, small claims and misdemeanor division, traffic violations bu-

reau, costs, and clerk and sheriff of court, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-35.8-9. Bailiff — Official court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Miami Circuit Court. Their salaries shall be paid monthly out of the treasury of Miami County as provided by law. [IC 33-5-35.8-9, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-10. Order books, judgment dockets, execution dockets, fee books and other books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be

kept separately from the books and papers of other courts. [IC 33-5-35.8-10, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-11. Location of sessions — Rooms and facilities. — The court shall hold its sessions in the Miami County courthouse in Peru, Indiana, or in such other places in the county as the board of county commissioners of Miami County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Miami County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-35.8-11, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-12. Jury commissioners — Selection of juries — Grand jury. — The jury commissioners appointed by the judge of the Miami Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Miami Circuit Court. The grand jury selected for the Miami Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-35.8-12, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-13. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-35.8-14. Transfer of actions. — The judge of the Miami Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-35.8-14, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-15. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — The judge of the Miami Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-35.8-15, as added by Acts 1977, P.L. 315, § 4.]

33-5-35.8-16. Standard small claims and misdemeanor division. — The Miami Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 56.]

CHAPTER 36

MONROE SUPERIOR COURT

33-5-36-1 — 33-5-36-17. [Repealed.]

Compiler's Notes. These sections, creating the Monroe Superior Court, were repealed by Acts 1971, P.L. 430, § 3.

CHAPTER 36.1

MONROE SUPERIOR COURT

33-5-36.1-1 — 33-5-36.1-29. [Repealed.]

Compiler's Notes. This chapter, concerning the Monroe superior court, was repealed by P.L.167-1984, § 92, P.L.171-1984, § 80, and P.L.40-1990, § 58.

CHAPTER 36.6

MONTGOMERY SUPERIOR COURT

SECTION.

- 33-5-36.6-1. Court created.
- 33-5-36.6-2. Judge — Election, term, and qualifications.
- 33-5-36.6-3. Jurisdiction.
- 33-5-36.6-4. Powers of judge.
- 33-5-36.6-5. Bailiff and court reporter.
- 33-5-36.6-6. Books.

SECTION.

- 33-5-36.6-7. Sessions — Rooms and facilities.
- 33-5-36.6-8. Jury commissioners.
- 33-5-36.6-9. Transfer of actions or proceedings.
- 33-5-36.6-10. Authority of circuit court and superior court judge to sit in either court.

33-5-36.6-1. Court created. — (a) There is established a court of record to be known as Montgomery superior court. The court may have a seal containing the words "Montgomery Superior Court of Montgomery County, Indiana".

(b) Montgomery County comprises the judicial district of the court. [P.L.334-1989(ss), § 23.]

Effective Dates. P.L.334-1989(ss), § 50, declared an emergency and provided that this chapter take effect January 1, 1991.

33-5-36.6-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Montgomery County. The term of the judge begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as a judge of the court, a person must:

- (1) Be a resident of Montgomery County;
- (2) Be less than seventy (70) years of age at the time of taking office; and
- (3) Be admitted to the bar of Indiana.

[P.L.334-1989(ss), § 23.]

33-5-36.6-3. Jurisdiction. — The court has the same jurisdiction as the Montgomery circuit court. [P.L.334-1989(ss), § 23.]

33-5-36.6-4. Powers of judge. — A judge of the court has the same powers relating to the conduct of the business of the court as the judge of the

Montgomery circuit court. A judge of the court may also administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.334-1989(ss), § 23.]

33-5-36.6-5. Bailiff and court reporter. — A judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Montgomery circuit court. Their salaries shall be paid monthly out of the treasury of Montgomery County as provided by law. [P.L.334-1989(ss), § 23.]

33-5-36.6-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.334-1989(ss), § 23.]

33-5-36.6-7. Sessions — Rooms and facilities. — The court shall hold sessions in the Montgomery County courthouse in Crawfordsville, Indiana, or in such other places in the county as the Montgomery County executive may provide. The county executive shall provide and maintain suitable courtrooms and other rooms and facilities, including furniture and equipment, as may be necessary. The Montgomery County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.334-1989(ss), § 23.]

33-5-36.6-8. Jury commissioners. — The jury commissioners appointed by the judge of the Montgomery circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Montgomery circuit court. The grand jury selected for the Montgomery circuit court shall also serve as the grand jury for the court as is necessary. [P.L.334-1989(ss), § 23.]

33-5-36.6-9. Transfer of actions or proceedings. — The judge of the Montgomery circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.334-1989(ss), § 23.]

33-5-36.6-10. Authority of circuit court and superior court judge to sit in either court. — The judge of the Montgomery circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if the judge of the circuit court was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as judge of the circuit court in any matter as if the judge of the court was an elected judge of the circuit court. [P.L.334-1989(ss), § 23.]

CHAPTER 37

MORGAN SUPERIOR COURT

SECTION.

- 33-5-37-1. Court created.
- 33-5-37-2. Name of court.
- 33-5-37-3. Bailiff and reporter.
- 33-5-37-4. Place of holding court — Provision by board of commissioners — Appropriation.

SECTION.

- 33-5-37-5. Jurisdiction.
- 33-5-37-6. Rules and regulations — Incidental powers of judge.
- 33-5-37-7. Magistrate.

33-5-37-1. Court created. — There is hereby created a superior court in and for the county of Morgan, Indiana, which shall consist of three (3) judges. Each judge shall hold office for a term of six (6) years beginning on the first day of January after election and until the judge's successor is elected and qualified. Every six (6) years, the voters of Morgan County shall elect at the general election the judges for the superior court. [Acts 1961, ch. 63, § 1; 1976, P.L. 133, § 24; P.L.18-1995, § 86.]

Compiler's Notes. P.L.18-1995, § 138, effective July 1, 1995, provides:

"(a) The judge of the Morgan superior court No. 2 (repealed by this act) serving on June 30, 1995, continues to serve as one (1) of the three (3) judges of the Morgan superior court for the duration of the judge's term.

"(b) This SECTION expires July 1, 1999."

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1. Judges, appointment by the governor, Ind. Const., Art. 5, § 18.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-37-2. Name of court. — The superior court created by the provisions of this chapter shall be known as the "Morgan Superior Court," and the county of Morgan shall constitute the judicial district of said court. The court shall be a court of record and general jurisdiction, and shall have a seal containing the words "Morgan Superior Court of Morgan County, Indiana." [Acts 1961, ch. 63, § 2; 1981, P.L. 272, § 71.]

33-5-37-3. Bailiff and reporter. — (a) Each judge of the Morgan Superior Court shall appoint a bailiff and an official court reporter for said court to serve as such during the pleasure of the court.

(b) The judge shall fix the compensation of the bailiff and official court reporter within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters.

(c) The compensation shall be paid monthly out of the treasury of Morgan County in the manner provided by law. [Acts 1961, ch. 63, § 3; P.L.171-1984, § 44; P.L.18-1995, § 87.]

Cross References. Salary of bailiff, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-37-4. Place of holding court — Provision by board of commissioners — Appropriation. — The Morgan Superior Court shall hold its sessions in the Morgan County courthouse, in the city of Martinsville, Indiana; and the board of county commissioners of Morgan County shall provide and maintain in the courthouse a suitable and convenient court-

room for the holding of said court, together with a suitable and convenient jury room and offices for the judge and the official court reporter. The board of county commissioners shall provide all necessary furniture and equipment for the rooms and offices of the court, and all necessary dockets, books and records for the court. The county council shall make the necessary appropriations from the general fund of the county for the purpose of carrying out the provisions of this chapter. [Acts 1961, ch. 63, § 5; 1981, P.L. 272, § 72.]

33-5-37-5. Jurisdiction. — (a) The Morgan superior court shall have concurrent jurisdiction, both original and appellate, with the Morgan Circuit Court, in all civil actions and proceedings at law and in equity, and in all criminal and probate matters, actions, and proceedings of which the Morgan Circuit Court has jurisdiction. However, the Morgan circuit court and one (1) judge of the Morgan superior court have exclusive jurisdiction in all juvenile matters, actions, and proceedings.

(b) The Morgan superior court has a standard small claims and misdemeanor division. [Acts 1961, ch. 63, § 6; P.L.18-1995, § 88.]

33-5-37-6. Rules and regulations — Incidental powers of judge. — (a) Each judge of the Morgan superior court shall have full power and authority to make and adopt rules and regulations for conducting the business of the Morgan superior court, not repugnant to the laws of the state of Indiana or the rules of the supreme court of the state of Indiana.

(b) Each judge shall have all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt and the power to enforce his orders. Each judge of the court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1961, ch. 63, § 7; P.L.18-1995, § 89.]

33-5-37-7. Magistrate. — The judges of the Morgan circuit and superior courts may jointly appoint one (1) full-time magistrate under IC 33-4-7. The magistrate continues in office until removed by the judges of the circuit and superior courts. [P.L.392-1987(ss), § 16; P.L.334-1989(ss), § 24; P.L.18-1995, § 90.]

CHAPTER 37.1

MORGAN SUPERIOR COURT NO. 2

33-5-37.1-1 — 33-5-37.1-10. [Repealed.]

Compiler's Notes. This chapter, concerning the Morgan superior court No. 2, was repealed by P.L.18-1995, § 114, effective July 1, 1995.

CHAPTER 37.2

NEWTON SUPERIOR COURT

SECTION.

- 33-5-37.2-1. Creation — Seal.
- 33-5-37.2-2. Judge — Term and qualifications.
- 33-5-37.2-3. Jurisdiction.
- 33-5-37.2-4. Powers of judge.
- 33-5-37.2-5 — 33-5-37.2-8. [Repealed.]
- 33-5-37.2-9. Bailiff and court reporter — Salaries.
- 33-5-37.2-10. Clerk to provide and keep separate books and papers.
- 33-5-37.2-11. Location of sessions — Provision and maintenance of facilities.

SECTION.

- 33-5-37.2-12. Jury commissioners — Selection of jurors.
- 33-5-37.2-13. [Repealed.]
- 33-5-37.2-14. Transfer of actions or proceedings.
- 33-5-37.2-15. Circuit or superior court judge may sit in either court.
- 33-5-37.2-16. Standard small claims and misdemeanor division.

33-5-37.2-1. Creation — Seal. — There is established a court of record to be known as the Newton Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Newton Superior Court, Newton County, Indiana”. Newton County comprises the judicial district of the court. [IC 33-5-37.2-1, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-2. Judge — Term and qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Newton County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Newton County; and
- (2) Be admitted to the bar of Indiana.

[IC 33-5-37.2-2, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-3. Jurisdiction. — The court has the same jurisdiction as the Newton Circuit Court, except that only the circuit court has juvenile jurisdiction. [IC 33-5-37.2-3, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Newton Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-37.2-4, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-5 — 33-5-37.2-8. [Repealed.]

Compiler’s Notes. These sections, concerning salary of judge, small claims and misdemeanor division, and costs and duties of

clerk and sheriff of court, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-37.2-9. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and

official court reporter for the Newton Circuit Court. Their salaries shall be paid monthly out of the treasury of Newton County as provided by law. [IC 33-5-37.2-9, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-10. Clerk to provide and keep separate books and papers. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-37.2-10, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-11. Location of sessions — Provision and maintenance of facilities. — The court shall hold its sessions in the Newton County courthouse in Kentland, Indiana, or in such other places in the county as the board of county commissioners of Newton County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Newton County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-37.2-11, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-12. Jury commissioners — Selection of jurors. — The jury commissioners appointed by the judge of the Newton Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Newton Circuit Court. The grand jury selected for the Newton Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-37.2-12, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-13. [Repealed.]

Compiler's Notes. This section, concerning juror and witness fees, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-37.2-14. Transfer of actions or proceedings. — The judge of the Newton Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-37.2-14, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-15. Circuit or superior court judge may sit in either court. — The judge of the Newton Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-37.2-15, as added by Acts 1980, P.L. 189, § 3.]

33-5-37.2-16. Standard small claims and misdemeanor division. — The Newton Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 58.]

CHAPTER 37.5

NOBLE SUPERIOR COURT

SECTION.

- 33-5-37.5-1. Noble superior court — Establishment — Seal.
- 33-5-37.5-2. Judge — Election — Term — Eligibility.
- 33-5-37.5-3. Jurisdiction.
- 33-5-37.5-4. Judge — Powers.
- 33-5-37.5-5 — 33-5-37.5-7. [Repealed.]
- 33-5-37.5-8. Appointment of bailiff and official court reporter — Salaries.

SECTION.

- 33-5-37.5-9. Court books.
- 33-5-37.5-10. Locations of court sessions.
- 33-5-37.5-11. Jury commissioners — Grand jury.
- 33-5-37.5-12. [Repealed.]
- 33-5-37.5-13. Transfer of actions.
- 33-5-37.5-14. Reciprocal right of judge to sit on other court.

33-5-37.5-1. Noble superior court — Establishment — Seal. — There is established a court of record to be known as the Noble Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Noble Superior Court, Noble County, Indiana.” Noble County comprises the judicial district of the court. [IC 33-5-37.5-1, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Noble County. His term begins January 1 following his election and ends December 31 following the election of his successor.

- (b) To be eligible to hold office as judge of the court, a person must:
- (1) Be a resident of Noble County;
 - (2) Be under seventy (70) years of age at the time he takes office; and
 - (3) Be admitted to the bar of Indiana.
- [IC 33-5-37.5-2, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-3. Jurisdiction. — The court has the same jurisdiction as the Noble Circuit Court. [IC 33-5-37.5-3, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-4. Judge — Powers. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Noble Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [IC 33-5-37.5-4, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-5 — 33-5-37.5-7. [Repealed.]

Compiler’s Notes. These sections concerning salary of judge, taxation and distribution of costs and duties of court clerk and sheriff, were repealed by P.L.171-1984, § 80.

33-5-37.5-8. Appointment of bailiff and official court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official

court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Noble Circuit Court. Their salaries shall be paid monthly out of the treasury of Noble County as provided by law. [IC 33-5-37.5-8, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-9. Court books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-37.5-9, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-10. Locations of court sessions. — The court shall hold its sessions in the Noble County courthouse in Albion, Indiana, or in such other places in the county as the board of county commissioners of Noble County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Noble County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-37.5-10, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-11. Jury commissioners — Grand jury. — The jury commissioners appointed by the judge of the Noble Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Noble Circuit Court. The grand jury selected for the Noble Circuit Court shall also serve as the grand jury for the court as may be necessary. [IC 33-5-37.5-11, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-12. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-37.5-13. Transfer of actions. — The judge of the Noble Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [IC 33-5-37.5-13, as added by Acts 1981, P.L. 279, § 1.]

33-5-37.5-14. Reciprocal right of judge to sit on other court. — The judge of the Noble Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [IC 33-5-37.5-14, as added by Acts 1981, P.L. 279, § 1.]

CHAPTER 37.7

OHIO AND SWITZERLAND SUPERIOR COURT

SECTION.

- 33-5-37.7-1. Ohio and Switzerland superior court — Established.
 33-5-37.7-2. Election of judge — Term.
 33-5-37.7-3. Jurisdiction.
 33-5-37.7-4. Powers of judge.
 33-5-37.7-5. Salary of judge.
 33-5-37.7-6 — 33-5-37.7-8. [Repealed.]
 33-5-37.7-9. Appointment of bailiff and official court reporter — Salaries.
 33-5-37.7-10. Court books.
 33-5-37.7-11. Locations for court sessions — Funding.

SECTION.

- 33-5-37.7-12. Appointment of jury commissioners — Jury selection and summoning.
 33-5-37.7-13. [Repealed.]
 33-5-37.7-14. Transfer of actions.
 33-5-37.7-15. Reciprocal right of judges to sit on other court.
 33-5-37.7-16. Standard small claims and misdemeanor division.

33-5-37.7-1. Ohio and Switzerland superior court — Established.

— There is established a court of record to be known as the Ohio and Switzerland Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Ohio and Switzerland Superior Court, Ohio and Switzerland Counties, Indiana.” Ohio and Switzerland counties comprise the judicial district of the court. [IC 33-5-37.1-1, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-2. Election of judge — Term. — The court has one (1) judge, who shall be elected at the general election every six (6) years in Ohio and Switzerland counties. His term begins January 1 following his election and ends December 31 following the election of his successor. [IC 33-5-37.7-2, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-3. Jurisdiction. — The court has the same jurisdiction as a circuit court under IC 33-4-3 and IC 33-4-4. [IC 33-5-37.7-3, as added by Acts 1981, P.L. 275, § 23.]

Compiler’s Notes. IC 33-4-3, referred to in this section, now deals with the small claims and misdemeanor division of circuit courts.

33-5-37.7-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as a judge of circuit court under IC 33-4-2. [IC 33-5-37.7-4, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-5. Salary of judge. — The judge of the court is entitled to the salary set out in IC 33-13-12. The salary shall be paid in the same manner as the salary of a circuit court judge, and the portion of the salary to be paid by the counties shall be paid by Ohio and Switzerland counties in equal portions. [IC 33-5-37.7-5, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-6 — 33-5-37.7-8. [Repealed.]

Compiler's Notes. These sections, concerning small claims and misdemeanor division, disbursement of costs, and superior

court clerk and sheriff, were amended in 1984 by P.L.171-1984, § 46 and repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-37.7-9. Appointment of bailiff and official court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for a circuit court. Their salaries shall be paid monthly out of the treasuries of Ohio and Switzerland counties as provided by law. [IC 33-5-37.7-9, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-10. Court books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-37.7-10, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-11. Locations for court sessions — Funding. — The court shall hold its sessions in the courthouse in Rising Sun, Indiana, and in Vevay, Indiana, or in such other places in the county as the board of county commissioners of Ohio or Switzerland County may provide. Each board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. Each county council shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [IC 33-5-37.7-11, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-12. Appointment of jury commissioners — Jury selection and summoning. — The superior court shall, during each calendar year, appoint one (1) resident of Ohio County and one (1) resident of Switzerland County to act as jury commissioners for the superior court. These jury commissioners shall:

- (1) Be appointed by a judge of the superior court;
- (2) Be qualified to act as jury commissioners; and
- (3) Prepare and draw the jury for the superior court;

in the same manner as is required for jury commissioners of circuit courts in Ohio and Switzerland counties. The clerks of the circuit courts of Ohio and Switzerland counties and the sheriffs of Ohio and Switzerland counties shall issue and serve process for the superior court in relation to jury selection and summoning in the same manner as for those circuit courts. The superior court may order the time when jurors must attend court, and may order the selection and summoning of other jurors for the superior court whenever necessary. [IC 33-5-37.7-12, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-13. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed

by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-37.7-14. Transfer of actions. — The judge of the circuit courts in Ohio or Switzerland counties may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court that originated in Ohio or Switzerland County to the court. The judge of the court may, with consent of the judge of such a circuit court, transfer any action or proceeding from the court to the circuit court in the county where that action or proceeding originated. [IC 33-5-37.7-14, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-15. Reciprocal right of judges to sit on other court. — The judge of the circuit court in Ohio or Switzerland County may, with the consent of the judge of the court, sit as a judge of the court in any matter over which he would have had jurisdiction as circuit court judge, as if he was an elected judge of the court. The judge of the court may, with consent of the judge of such a circuit court, sit as a judge of a circuit court in Ohio or Switzerland County in any matter over which he would have jurisdiction as superior judge, as if he was an elected judge of that circuit court. [IC 33-5-37.7-15, as added by Acts 1981, P.L. 275, § 23.]

33-5-37.7-16. Standard small claims and misdemeanor division. — The Ohio and Switzerland Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 59.]

CHAPTER 38

PORTER SUPERIOR COURT

SECTION.

- 33-5-38-1. Court established — Judges.
- 33-5-38-2. Name.
- 33-5-38-3. Seal.
- 33-5-38-4. Jurisdiction.
- 33-5-38-5. Court of record.
- 33-5-38-6. Rules and regulations — Incidental powers of judges.
- 33-5-38-7. Orders, writs, appointments, commissions.
- 33-5-38-8. Sessions — Rooms and facilities.
- 33-5-38-9 — 35-5-38-12. [Repealed.]
- 33-5-38-13. Record books.
- 33-5-38-14. Order books.
- 33-5-38-15. Bailiffs — Appointment, salaries.
- 33-5-38-16. Court reporters — Appointment — Term — Salary.
- 33-5-38-17. Supreme Court rules — Applicability.
- 33-5-38-18. [Repealed.]
- 33-5-38-19. [Repealed.]
- 33-5-38-20. Appeals to supreme court or court of appeals.

SECTION.

- 33-5-38-21. Process.
- 33-5-38-22. Appointment of additional personnel.
- 33-5-38-23. Presiding judge.
- 33-5-38-24. Action by entire court — Decision of majority.
- 33-5-38-25. Appointment of additional personnel — Administrative officer.
- 33-5-38-26. Transfer of cases from circuit court.
- 33-5-38-27. Transfer of cases to circuit court.
- 33-5-38-28. Authority of circuit judge to sit in superior court.
- 33-5-38-29. [Repealed.]
- 33-5-38-30. Commissioning of judges — Vacancies.
- 33-5-38-31. [Repealed.]
- 33-5-38-32. Standard small claims and misdemeanor divisions.
- 33-5-38-33. Appointment of magistrate.

33-5-38-1. Court established — Judges. — (a) There is established a superior court in Porter County, Indiana, which shall consist of five (5) judges, who shall hold their office for six (6) years, beginning on the first day of January after their election and until their successors are elected and

qualified if they shall so long behave well. Every six (6) years the voters of Porter County shall elect at the general election the judges for the superior court.

(b) The judges of the superior court established under this section are designated as follows:

- (1) Two (2) judges are judges of the superior court, superior division.
 - (2) Three (3) judges are judges of the superior court, county division.
- [Acts 1969, ch. 1, § 1; 1976, P.L. 133, § 25; P.L.188-1986, § 13; P.L.392-1987(ss), § 17; P.L.133-1992, § 35.]

Effective Dates. P.L.392-1987(ss), § 45. and provided that the amendment take effect January 1, 1988. July 1, 1993.

P.L.133-1992, § 90, declared an emergency

33-5-38-2. Name. — The court shall be named and styled Porter Superior Court. [Acts 1969, ch. 1, § 2.]

33-5-38-3. Seal. — (a) The court's superior division shall have a seal consisting of a circular disk containing the words "Porter Superior Court, Superior Division," an impression of which shall be spread of record upon the order book of the court.

(b) The court's county division shall have a seal consisting of a circular disk containing the words "Porter Superior Court, County Division," an impression of which shall be imprinted upon the order book of the court. [Acts 1969, ch. 1, § 3; P.L.188-1986, § 14.]

33-5-38-4. Jurisdiction. — (a) Except as provided in subsection (b), the court for the county has the following jurisdiction:

- (1) Original, appellate, concurrent, and coextensive jurisdiction with the circuit court in all civil cases, criminal cases, and probate matters.
- (2) Concurrent and coextensive jurisdiction with the circuit court in all cases of appeal from boards of county commissioners and all other appellate jurisdiction vested in the circuit court.
- (3) Concurrent and coextensive jurisdiction in all matters of probate and the settlement of decedents' estates, trusts, and guardianships.
- (4) Jurisdiction over all other subject matters actionable in the circuit court.

(b) All matters in which a child is alleged to be a delinquent child or a child in need of services exclusively resides in the jurisdiction of the circuit court of the county. [Acts 1969, ch. 1, § 4; P.L.1-1990, § 321.]

33-5-38-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [Acts 1969, ch. 1, § 5.]

33-5-38-6. Rules and regulations — Incidental powers of judges. — The judges of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not

repugnant to the laws of this state, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. [Acts 1969, ch. 1, § 6.]

33-5-38-7. Orders, writs, appointments, commissions. — The judges of the court shall have the same power, in term time or in vacation, to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus and of mandate and prohibition, to appoint receivers, masters and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof. [Acts 1969, ch. 1, § 7.]

33-5-38-8. Sessions — Rooms and facilities. — (a) The Porter superior court, superior division, shall hold its sessions in the Porter County courthouse in the city of Valparaiso, Indiana.

(b) One (1) judge of the Porter superior court, county division, shall hold sessions of the court in Valparaiso and the other two (2) judges shall hold sessions of the court principally in Portage Township and may sit periodically in Westchester Township in the discretion of the judges in Porter County.

(c) The board of county commissioners of Porter County shall provide and maintain suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, secretaries, and official court reporters, and such other facilities as may be necessary. The board of county commissioners shall also provide all the necessary furniture and equipment for the rooms and offices of the court. The county council shall appropriate sufficient funds therefor. [Acts 1969, ch. 1, § 8; P.L.188-1986, § 15; P.L.392-1987(ss), § 18; P.L.133-1992, § 36.]

Effective Dates. P.L.392-1987(ss), § 45. and provided that the amendment take effect January 1, 1988. July 1, 1993.
P.L.133-1992, § 90, declared an emergency

33-5-38-9 — 35-5-38-12. [Repealed.]

Compiler's Notes. These sections, concerning salaries of judges, clerk and sheriff and their duties, liabilities, fees and procedure and court fees, were repealed by P.L.171-1984, § 80.

33-5-38-13. Record books. — The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee-books and such other books, papers and records as may be necessary for the court, and all books, papers and proceedings of the court shall be kept distinct and separate from those of other courts. [Acts 1969, ch. 1, § 13.]

33-5-38-14. Order books. — (a) The court shall maintain a single order book for the Porter superior court, superior division, which order book may be signed on behalf of the court by any of the sitting judges of the superior division, and such signature shall be due authentication of the actions of each of the judges in the court.

(b) The court shall maintain an order book for the judge of the Porter superior court, county division, located in Valparaiso and a separate order book for the judge of the Porter superior court, county division, located in Portage Township. The signature of a judge of the Porter superior court, county division, shall be authentication of the actions of the judge taken on behalf of the superior court holding sessions in that location. [Acts 1969, ch. 1, § 14; P.L.188-1986, § 16; P.L.392-1987(ss), § 19.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-38-15. Bailiffs — Appointment, salaries. — Each judge of the court shall appoint a bailiff for the court whose salary shall be fixed by the court and paid as now provided by law. [Acts 1969, ch. 1, § 15.]

Cross References. Salary of bailiff, IC 33-13-4-1.

33-5-38-16. Court reporters — Appointment — Term — Salary. — Each judge of the court shall appoint a court reporter whose duties, salary and term shall be regulated in the same manner as the court reporter of the circuit court. [Acts 1969, ch. 1, § 16.]

Cross References. Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9. Removal, vacancy in office of court reporter, IC 33-15-23-4.

33-5-38-17. Supreme Court rules — Applicability. — All laws and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [Acts 1969, ch. 1, § 17.]

Cross References. Change of venue from county, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

Commencement of actions and the issuance

and service of process, Rules TR. 3, 4 — 4.17.
Judges pro tempore, IC 34-35-1-4.

Jury commissioners, IC 33-4-5-1 — IC 33-4-5-9.

33-5-38-18. [Repealed.]

Compiler's Notes. The section, concerning jury commissioners, was repealed by P.L.214-1996, § 3, effective July 1, 1996.

33-5-38-19. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-38-20. Appeals to supreme court or court of appeals. — Any party may appeal to the supreme court or the court of appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law governing appeals from the circuit court to the court of appeals and the supreme court. [Acts 1969, ch. 1, § 20; P.L.3-1989, § 196.]

33-5-38-21. Process. — The process of the court shall have the seal affixed and be attested, directed, served and returned, and be in the form as is, or may be, provided for process issuing from the circuit court. [Acts 1969, ch. 1, § 21, p. 1.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-38-22. Appointment of additional personnel. — Each judge shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of his duties as judge of the court. [Acts 1969, ch. 1, § 22.]

Cross References. Appointment of additional personnel by the court, IC 33-5-38-25.

33-5-38-23. Presiding judge. — The court by rules duly adopted by the court, shall designate one (1) of the judges as presiding judge and fix the time he shall preside, and said judge shall be responsible for the operation and conduct of the court and for seeing that said court shall efficiently and judicially operate. In case no agreement is reached the judge with the most seniority as a judge of a court of record shall act as presiding judge. [Acts 1969, ch. 1, § 23.]

33-5-38-24. Action by entire court — Decision of majority. — Whenever any action of the entire court is required, then the judges of the court will act in concert. In the event of disagreement, the decision of the majority of the judges shall control: Provided, however, That in the absence of such majority, the decision of the presiding judge shall control. [Acts 1969, ch. 1, § 24.]

33-5-38-25. Appointment of additional personnel — Administrative officer. — The court shall, when in its opinion it shall be necessary,

appoint such additional personnel for the proper administration of the court, including but not limited to an administrative officer who shall operate under the jurisdiction of the presiding judge. [Acts 1969, ch. 1, § 25.]

Cross References. Appointment of additional personnel by individual judges, IC 33-5-38-22.

33-5-38-26. Transfer of cases from circuit court. — The judge of the circuit court may, with the consent of this court transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [Acts 1969, ch. 1, § 26.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-38-27. Transfer of cases to circuit court. — Any judge of the superior court may, with the consent of the judge of the circuit court transfer any action, cause, or proceeding filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in such action, cause, or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the superior court. However, a judge of the superior court, county division, may not transfer any action or proceeding docketed in the small claims and misdemeanor division to the circuit court or to the superior court, superior division. [Acts 1969, ch. 1, § 27; P.L.188-1986, § 18.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-38-28. Authority of circuit judge to sit in superior court. — The judge of the Porter Circuit Court shall be, at his discretion and with the court's permission, authorized to sit and to act as a judge of this court in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this court, with all the rights and powers as if he were a duly elected judge of this court, including the right to act as presiding judge and otherwise participate in the organization and administration of this court. [Acts 1969, ch. 1, § 28.]

33-5-38-29. [Repealed.]

Compiler's Notes. This section, concerning the appointment of an additional judge and the incumbent judges of the Porter Superior

Court, was repealed by Acts 1976, P. L. 133, § 35.

33-5-38-30. Commissioning of judges — Vacancies. — The judges of the Porter Superior Court as created by this chapter shall be commissioned by the governor in the same manner as a judge of the circuit court and any

vacancy occurring in the office of judge of such court shall be filled by appointment by the governor in the same manner as vacancies in the office of the judge of circuit court. [Acts 1969, ch. 1, § 30; 1981, P.L. 272, § 73.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1.
Judges, commencement and expiration of terms of office, IC 33-13-5-1.

Vacancies in the office of judge, filled by the governor, Ind. Const., Art. 5, § 18.

33-5-38-31. [Repealed.]

Compiler's Notes. This section, relating to the partial repeal of IC 33-5-28 and IC

33-5-31 with regard to the Porter superior court, was repealed by P.L.4-1988, § 19.

33-5-38-32. Standard small claims and misdemeanor divisions. — The Porter superior court, county division, located in Valparaiso, has a standard small claims and misdemeanor division and the Porter superior court, county division, located in Portage Township has a standard small claims and misdemeanor division. [P.L.188-1986, § 19; P.L.392-1987(ss), § 20.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-38-33. Appointment of magistrate. — The judges of the Porter superior courts may jointly appoint two (2) full-time magistrates under IC 33-4-7. The magistrates continue in office until removed by the judges of the superior courts. [P.L.18-1995, § 91.]

CHAPTER 38.1

POSEY SUPERIOR COURT

SECTION.	SECTION.
33-5-38.1-1. Posey superior court established.	33-5-38.1-8. Jury commissioners — Juries — Grand jury.
33-5-38.1-2. Election of judge — Term — Eligibility.	33-5-38.1-9. Transfer of actions between courts.
33-5-38.1-3. Jurisdiction of court.	33-5-38.1-10. Movement of judges between courts.
33-5-38.1-4. Powers of judge.	33-5-38.1-11. Small claims and misdemeanor division.
33-5-38.1-5. Appointment of bailiff and court reporter — Salaries.	
33-5-38.1-6. Court record books.	
33-5-38.1-7. Court rooms and facilities — Funds for provision and maintenance.	

33-5-38.1-1. Posey superior court established. — (a) There is established a court of record to be known as the Posey superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Posey Superior Court, Posey County, Indiana”.

(c) Posey County comprises the judicial district of the court. [P.L.18-1995, § 92.]

33-5-38.1-2. Election of judge — Term — Eligibility. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Posey County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as a judge of the court, a person must be:

- (1) A resident of Posey County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.18-1995, § 92.]

33-5-38.1-3. Jurisdiction of court. — The court has the same jurisdiction as the Posey circuit court. [P.L.18-1995, § 92.]

33-5-38.1-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Posey circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.18-1995, § 92.]

33-5-38.1-5. Appointment of bailiff and court reporter — Salaries. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Posey circuit court; and
- (2) Paid monthly out of the treasury of Posey County as provided by law. [P.L.18-1995, § 92.]

33-5-38.1-6. Court record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.18-1995, § 92.]

33-5-38.1-7. Court rooms and facilities — Funds for provision and maintenance. — (a) The court shall hold sessions in:

- (1) The Posey County courthouse in Mount Vernon, Indiana; or
- (2) Other places in the county that the Posey County executive provides.

(b) The Posey County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Posey County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.18-1995, § 92.]

33-5-38.1-8. Jury commissioners — Juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Posey circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Posey circuit court.

(c) The grand jury selected for the Posey circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.18-1995, § 92.]

33-5-38.1-9. Transfer of actions between courts. — (a) The judge of the Posey circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the Posey circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.18-1995, § 92.]

33-5-38.1-10. Movement of judges between courts. — (a) The judge of the Posey circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Posey circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.18-1995, § 92.]

33-5-38.1-11. Small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.18-1995, § 92.]

CHAPTER 38.2

PULASKI SUPERIOR COURT

- SECTION.
- 33-5-38.2-1. Establishment of court — Seal.
 - 33-5-38.2-2. Judge — Election, term, and qualifications.
 - 33-5-38.2-3. Jurisdiction.
 - 33-5-38.2-4. Powers of judge.
 - 33-5-38.2-5. Bailiff — Official court reporter.
 - 33-5-38.2-6. Record books.
 - 33-5-38.2-7. Location of sessions — Rooms and facilities provided.

- SECTION.
- 33-5-38.2-8. Jury commissioners — Selection of juries — Grand jury.
 - 33-5-38.2-9. Transfer of actions.
 - 33-5-38.2-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
 - 33-5-38.2-11. Standard small claims and misdemeanor division.

33-5-38.2-1. Establishment of court — Seal. — (a) There is established a court of record to be known as the Pulaski superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Pulaski Superior Court, Pulaski County, Indiana”.

(c) Pulaski County comprises the judicial district of the court. [P.L.133-1992, § 37.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that this chapter take effect July 1, 1993.

33-5-38.2-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Pulaski County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Pulaski County;
 - (2) Less than seventy (70) years of age at the time of taking office; and
 - (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 37.]

33-5-38.2-3. Jurisdiction. — The court has the same jurisdiction as the Pulaski circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.133-1992, § 37.]

33-5-38.2-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Pulaski circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 37.]

33-5-38.2-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

- (b) The salaries of the bailiff and the official court reporter shall be:
- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Pulaski circuit court; and
 - (2) Paid monthly out of the treasury of Pulaski County as provided by law. [P.L.133-1992, § 37.]

33-5-38.2-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 37.]

33-5-38.2-7. Location of sessions — Rooms and facilities provided. — (a) The court shall hold sessions in:

- (1) The Pulaski County courthouse in Winamac, Indiana; or
- (2) Other places in the county that the Pulaski County executive provides.

(b) The Pulaski County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Pulaski County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 37.]

33-5-38.2-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Pulaski circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Pulaski circuit court.

(c) The grand jury selected for the Pulaski circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 37.]

33-5-38.2-9. Transfer of actions. — (a) The judge of the Pulaski circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.133-1992, § 37.]

33-5-38.2-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — (a) The judge of the circuit court may, with the consent of the judge of the court, sit as judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.133-1992, § 37.]

33-5-38.2-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 37.]

CHAPTER 38.3

PUTNAM SUPERIOR COURT

SECTION.

- 33-5-38.3-1. Establishment — Seal — Judicial district.
- 33-5-38.3-2. Judge — Term — Qualifications.
- 33-5-38.3-3. Jurisdiction.
- 33-5-38.3-4. Powers of judge.
- 33-5-38.3-5. Bailiff and court reporter — Salary.
- 33-5-38.3-6. Clerk — Duties.
- 33-5-38.3-7. Location of sessions — Facilities — Appropriations.

SECTION.

- 33-5-38.3-8. Jury commissioners — Selection of juries.
- 33-5-38.3-9. Transfer of actions.
- 33-5-38.3-10. Judge — Sitting as judge of court.
- 33-5-38.3-11. Small claims and misdemeanor division.

33-5-38.3-1. Establishment — Seal — Judicial district. — (a) There is established a court of record to be known as the Putnam superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Putnam Superior Court, Putnam County, Indiana”.

(c) Putnam County comprises the judicial district of the court. [P.L.215-1996, § 2.]

33-5-38.3-2. Judge — Term — Qualifications. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Putnam County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as a judge of the court, a person must be:

- (1) a resident of Putnam County; and
- (2) admitted to the practice of law in Indiana.

[P.L.215-1996, § 2.]

33-5-38.3-3. Jurisdiction. — The court has the same jurisdiction as the Putnam circuit court. [P.L.215-1996, § 2.]

33-5-38.3-4. Powers of judge. — The judge of the court:

- (1) has the same powers relating to the conduct of the business of the court as the judge of the Putnam circuit court; and
- (2) may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.215-1996, § 2.]

33-5-38.3-5. Bailiff and court reporter — Salary. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) fixed in the same manner as the salaries of the bailiff and official court reporter for the Putnam circuit court; and
- (2) paid monthly out of the treasury of Putnam County as provided by law. [P.L.215-1996, § 2.]

33-5-38.3-6. Clerk — Duties. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) order books;
- (2) judgment dockets;
- (3) execution dockets;
- (4) fee books; and
- (5) other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.215-1996, § 2.]

33-5-38.3-7. Location of sessions — Facilities — Appropriations. —

(a) The court shall hold sessions in:

- (1) the Putnam County courthouse in Greencastle, Indiana; or
- (2) other places in the county that the Putnam County executive provides.

(b) The Putnam County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Putnam County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.215-1996, § 2.]

33-5-38.3-8. Jury commissioners — Selection of juries. — (a) The jury commissioners appointed by the judge of the Putnam circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Putnam circuit court.

(c) The grand jury selected for the Putnam circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.215-1996, § 2.]

33-5-38.3-9. Transfer of actions. — (a) The judge of the Putnam circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the Putnam circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.215-1996, § 2.]

33-5-38.3-10. Judge — Sitting as judge of court. — (a) The judge of the Putnam circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Putnam circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.215-1996, § 2.]

33-5-38.3-11. Small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.215-1996, § 2.]

CHAPTER 38.5

RANDOLPH SUPERIOR COURT

SECTION.

33-5-38.5-1. Court established — Seal.

33-5-38.5-2. Judge.

33-5-38.5-3. Jurisdiction.

33-5-38.5-4. Powers of judge.

33-5-38.5-5. Bailiff and court reporter.

33-5-38.5-6. Books.

33-5-38.5-7. Sessions — Rooms and facilities.

33-5-38.5-8. Jury commissioners.

SECTION.

33-5-38.5-9. Transfer of actions or proceedings.

33-5-38.5-10. Authority of circuit and superior court judges to sit in either court.

33-5-38.5-11. Standard small claims and misdemeanor division.

33-5-38.5-1. Court established — Seal. — There is established a court of record to be known as the Randolph superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Randolph Superior Court, Randolph County, Indiana.” Randolph County comprises the judicial district of the court. [P.L.392-1987(ss), § 21.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

33-5-38.5-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Randolph County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Randolph County;

(2) Be less than seventy (70) years of age at the time of taking office; and

(3) Be admitted to the practice of law in Indiana.

[P.L.392-1987(ss), § 21.]

33-5-38.5-3. Jurisdiction. — The court has the same jurisdiction as the Randolph circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.392-1987(ss), § 21.]

33-5-38.5-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Randolph circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.392-1987(ss), § 21.]

33-5-38.5-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Randolph circuit court. Their salaries shall be paid monthly out of the treasury of Randolph County as provided by law. [P.L.392-1987(ss), § 21.]

33-5-38.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.392-1987(ss), § 21.]

33-5-38.5-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Randolph County courthouse in Winchester, Indiana, or in such other places in the county as the Randolph County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Randolph County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.392-1987(ss), § 21.]

33-5-38.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the Randolph circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Randolph circuit court. The grand jury selected for the Randolph circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.392-1987(ss), § 21.]

33-5-38.5-9. Transfer of actions or proceedings. — The judge of the Randolph circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.392-1987(ss), § 21.]

33-5-38.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Randolph circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.392-1987(ss), § 21.]

33-5-38.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.392-1987(ss), § 21.]

CHAPTER 38.7

RIPLEY SUPERIOR COURT

SECTION.	SECTION.
33-5-38.7-1. Ripley superior court established.	Funds for provision and maintenance.
33-5-38.7-2. Election of judge — Term — Eligibility.	33-5-38.7-8. Jury commissioners — Juries — Grand jury.
33-5-38.7-3. Jurisdiction of court.	33-5-38.7-9. Transfer between courts.
33-5-38.7-4. Powers of judge.	33-5-38.7-10. Movement of judges between courts.
33-5-38.7-5. Appointment of bailiff and court reporter — Salaries.	33-5-38.7-11. Small claims and misdemeanor division.
33-5-38.7-6. Court record books.	
33-5-38.7-7. Courtrooms and facilities —	

33-5-38.7-1. Ripley superior court established. — (a) There is established a court of record to be known as the Ripley superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Ripley Superior Court, Ripley County, Indiana”.

(c) Ripley County comprises the judicial district of the court. [P.L.18-1995, § 93.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 93 provided that this chapter take effect January 1, 1997.

33-5-38.7-2. Election of judge — Term — Eligibility. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Ripley County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as a judge of the court, a person must be:
- (1) A resident of Ripley County;

(2) Less than seventy (70) years of age at the time of taking office; and

(3) Admitted to the practice of law in Indiana.

[P.L.18-1995, § 93.]

33-5-38.7-3. Jurisdiction of court. — The court has the same jurisdiction as the Ripley circuit court. [P.L.18-1995, § 93.]

33-5-38.7-4. Powers of judge. — The judge of the court:

(1) Has the same powers relating to the conduct of the business of the court as the judge of the Ripley circuit court; and

(2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.18-1995, § 93.]

33-5-38.7-5. Appointment of bailiff and court reporter — Salaries. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

(1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Ripley circuit court; and

(2) Paid monthly out of the treasury of Ripley County as provided by law. [P.L.18-1995, § 93.]

33-5-38.7-6. Court record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

(1) Order books;

(2) Judgment dockets;

(3) Execution dockets;

(4) Fee books; and

(5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.18-1995, § 93.]

33-5-38.7-7. Courtrooms and facilities — Funds for provision and maintenance. — (a) The court shall hold sessions in:

(1) The Ripley County courthouse in Versailles, Indiana; or

(2) Other places in the county that the Ripley County executive provides.

(b) The Ripley County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Ripley County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.18-1995, § 93.]

33-5-38.7-8. Jury commissioners — Juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Ripley circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Ripley circuit court.

(c) The grand jury selected for the Ripley circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.18-1995, § 93.]

33-5-38.7-9. Transfer between courts. — (a) The judge of the Ripley circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the Ripley circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.18-1995, § 93.]

33-5-38.7-10. Movement of judges between courts. — (a) The judge of the Ripley circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Ripley circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.18-1995, § 93.]

33-5-38.7-11. Small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.18-1995, § 93.]

CHAPTER 38.9

SCOTT SUPERIOR COURT

SECTION.

- 33-5-38.9-1. Establishment of court — Seal.
- 33-5-38.9-2. Judge — Election, term, and qualifications.
- 33-5-38.9-3. Jurisdiction.
- 33-5-38.9-4. Powers of judge.
- 33-5-38.9-5. Bailiff — Official court reporter.
- 33-5-38.9-6. Record books.
- 33-5-38.9-7. Location of sessions — Rooms and facilities provided.

SECTION.

- 33-5-38.9-8. Jury commissioners — Selection of juries — Grand jury.
- 33-5-38.9-9. Transfer of actions.
- 33-5-38.9-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court.
- 33-5-38.9-11. Standard small claims and misdemeanor division.

33-5-38.9-1. Establishment of court — Seal. — There is established a court of record to be known as the Scott superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Scott Superior Court, Scott County, Indiana.” Scott County comprises the judicial district of the court. [P.L.133-1992, § 38.]

33-5-38.9-2. Judge — Election, term, and qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Scott County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must be:

- (1) A resident of Scott County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.133-1992, § 38.]

33-5-38.9-3. Jurisdiction. — The court has the same jurisdiction as the Scott circuit court. [P.L.133-1992, § 38.]

33-5-38.9-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Scott circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.133-1992, § 38.]

33-5-38.9-5. Bailiff — Official court reporter. — (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Scott circuit court; and
- (2) Paid monthly out of the treasury of Scott County as provided by law. [P.L.133-1992, § 38.]

33-5-38.9-6. Record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

which shall be kept separately from the books and papers of other courts. [P.L.133-1992, § 38.]

33-5-38.9-7. Location of sessions — Rooms and facilities provided.

— The court shall hold sessions in Scottsburg, Indiana. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Scott County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.133-1992, § 38.]

33-5-38.9-8. Jury commissioners — Selection of juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Scott circuit court shall serve as the jury commissioners for the court.

(b) Juries shall be selected in the same manner as juries for the Scott circuit court.

(c) The grand jury selected for the Scott circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.133-1992, § 38.]

33-5-38.9-9. Transfer of actions. — The judge of the Scott circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with the consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.133-1992, § 38.]

33-5-38.9-10. Circuit court judge sitting as judge of court — Judge sitting as judge of circuit court. — The judge of the Scott circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.133-1992, § 38.]

33-5-38.9-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.133-1992, § 38.]

CHAPTER 39

SHELBY SUPERIOR COURT

SECTION.	SECTION.
33-5-39-1. Court created — Judge — Term — Election.	33-5-39-9. Filing civil actions on circuit and superior court dockets.
33-5-39-1.5. “Court” construed.	33-5-39-10. Transfer of civil actions between circuit and superior courts.
33-5-39-2. Court of record and general jurisdiction.	33-5-39-11. Books.
33-5-39-3, 33-5-39-4. [Repealed.]	33-5-39-12. Jury commissioners.
33-5-39-5. Bailiff and reporter.	33-5-39-13. Authority of circuit and superior court judges to sit in either court.
33-5-39-6. Place of holding court.— Provision by board of commissioners — Appropriations.	33-5-39-14. Transfer of actions or proceedings.
33-5-39-7. Jurisdiction.	
33-5-39-8. Rules and regulations — Incidental powers of judge.	

33-5-39-1. Court created — Judge — Term — Election. — (a) There is established a superior court No. 1 in and for the county of Shelby, Indiana. The court shall consist of one (1) judge who shall be elected for a term of six (6) years, beginning on the first day of January after the judge’s election, and until a successor is duly elected and qualified. Every six (6) years, the voters of Shelby County shall elect at the general election a judge for the superior court.

(b) An additional court is established to be known as Shelby superior court No. 2. Shelby superior court No. 2 has one (1) judge, who is elected at the general election every six (6) years in Shelby County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(c) To be eligible to hold office as a judge of a Shelby superior court, a person must be:

- (1) A resident of Shelby County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[Acts 1961, ch. 95, § 1; 1976, P.L. 133, § 26; P.L.176-1988, § 27.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this

section take effect January 1, 1989.
Cross References. Judges, admission to

practice of law as qualification, IC 33-13-9-1.
Judges, appointment by the governor, Ind.
Const., Art. 5, § 18.

Judges, commencement and expiration of
terms of office, IC 33-13-5-1.

33-5-39-1.5. "Court" construed. — As used in this chapter, "court" refers to a superior court established under section 1 [IC 33-5-39-1] of this chapter. [P.L.176-1988, § 28.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-2. Court of record and general jurisdiction. — (a) The county of Shelby, in the state of Indiana, shall be and constitute the judicial district of the courts. The courts are courts of record and general jurisdiction.

(b) The courts shall be known as Shelby superior court No. 1 and Shelby superior court No. 2. Shelby superior court No. 1 shall have a seal containing the words "Shelby Superior Court No. 1 of Shelby County, Indiana," and Shelby superior court No. 2 shall have a seal containing the words "Shelby Superior Court No. 2 of Shelby County, Indiana." [Acts 1961, ch. 95, § 2; 1969, ch. 162, § 1; P.L.176-1988, § 29.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-3, 33-5-39-4. [Repealed.]

Compiler's Notes. These sections, concerning the terms and election of judges of the Shelby Superior Court and duties of clerk and

sheriff, were repealed by Acts 1976, P. L. 133, § 35 and P.L.171-1984, § 80.

33-5-39-5. Bailiff and reporter. — The judge of each court shall appoint a bailiff and an official court reporter for the court, to serve as such during the pleasure of the appointing judge. The appointing judge shall fix the compensation of the officers within the limits and in the manner as may be prescribed by law concerning bailiffs and official court reporters. The compensation of the officers shall be paid monthly out of the treasury of Shelby County in the manner prescribed by law. [Acts 1961, ch. 95, § 4; P.L.171-1984, § 47; P.L.176-1988, § 30.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

Cross References. Salary of bailiff, IC 33-13-4-1.

33-5-39-6. Place of holding court — Provision by board of commissioners — Appropriations. — (a) Each court shall hold its sessions in the Shelby County courthouse, in the city of Shelbyville, Indiana, and the board of commissioners of Shelby County shall:

(1) Provide and maintain, in the courthouse, a suitable and convenient courtroom for the holding of each court, together with a convenient jury

room and offices for the presiding judge and the official court reporter; and

(2) Provide all necessary furniture and equipment for the rooms and offices and all necessary dockets, books, and records for each court.

(b) The board of commissioners of Shelby County shall have sole and exclusive control over the choice of a courtroom and furnishing it for court use.

(c) The county council of Shelby County shall appropriate sufficient funds from the general fund of the county:

(1) To defray the expense of equipping and furnishing the courtrooms, jury rooms, and offices of the judges and court reporters for the courts; and

(2) For the maintenance of the courtrooms and offices and for all other expenses incidental to the conduct of each court. [Acts 1961, ch. 95, § 6; P.L.176-1988, § 31.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-7. Jurisdiction. — (a) The courts have the same jurisdiction as the Shelby circuit court, except that Shelby superior court No. 1 has exclusive juvenile jurisdiction in the county.

(b) Shelby superior court No. 2 has a standard small claims and misdemeanor division. [Acts 1961, ch. 95, § 7; 1969, ch. 162, § 4; 1978, P.L. 136, § 47; P.L.176-1988, § 32.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

NOTES TO DECISIONS

Transfer of Criminal Cases.

This section providing for the transfer of criminal cases in the Shelby Circuit Court to the Shelby Superior Court excludes from its provisions cases in which trial has been commenced and in which final judgment has not been made and entered by the Shelby Circuit Court; therefore, since this case was tried by

the circuit court but judgment was improvidently entered, the court retained jurisdiction upon remand of the cause for such proceedings as were necessary preliminary to the entry of the final judgment thereon. *Ware v. State*, 243 Ind. 639, 189 N.E.2d 704, 1 Ind. Dec. 306, cert. denied, 375 U.S. 934, 84 S. Ct. 337, 11 L. Ed. 2d 265 (1963).

33-5-39-8. Rules and regulations — Incidental powers of judge. — The judge of each court has the same powers related to the conduct of the business of the court as the judge of the Shelby circuit court. The judge may adopt rules for the conduct of the business of the court, not repugnant to the laws of the state and the rules of the supreme court of Indiana. The judge also may administer oaths, solemnize marriages, take and certify acknowledgments of deeds, give all necessary certificates for the authentication of records and proceedings of the court. [Acts 1961, ch. 95, § 8; P.L.176-1988, § 33.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-9. Filing civil actions on circuit and superior court dockets. — (a) If the transcript of the original papers in a civil action or proceeding received by the clerk of the circuit and superior courts of Shelby County on change of venue from another county contains an order of the court from which venue was changed designating the court to which the case is to be transferred, the clerk shall file the action or proceeding on the docket of the designated court.

(b) If the transcript of the original papers in a civil action or proceeding contains no order designating the court to which the case is to be transferred, the clerk shall alternately file each action or proceeding on the docket of the circuit court and the docket of the superior courts depending on the order and sequence in which the papers of the cases reach the clerk.

(c) This section does not apply to criminal cases. [P.L.171-1984, § 48; P.L.176-1988, § 34.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-10. Transfer of civil actions between circuit and superior courts. — (a) After any action or proceeding is docketed in a superior court or the circuit court on change of venue, all of the parties who have appeared in the case in person or by counsel may agree on and request a transfer from a superior court to the circuit court or from the circuit court to a superior court.

(b) Upon the agreement of all parties, the court in which the action is then pending shall order the case transferred to the other court, and the clerk shall transmit the original papers of the case to the other court and docket the case in the other court without any transcript being required.

(c) All further proceedings in the case shall take place in the court to which the case is transferred. If the case is one in which the prosecuting attorney is required to appear and defend, and if a party fails to appear or to employ counsel, the prosecuting attorney has the right to agree to the transfer in lieu of the nonappearing party or counsel.

(d) This section does not apply to criminal cases. [P.L.171-1984, § 49; P.L.176-1988, § 35.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-11. Books. — The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee books, and other books, papers, and records necessary for each court. All books, papers, and records necessary for each court and all books, papers, and proceedings of each court shall be kept distinct and separate from those of other courts. [P.L.176-1988, § 36.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-12. Jury commissioners. — The jury commissioners appointed by the judge of the Shelby circuit court shall serve as the jury commissioners for the courts. Juries shall be selected in the same manner as juries for the Shelby circuit court. The Shelby circuit court and each court may use a separate grand jury. [P.L.176-1988, § 37.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-13. Authority of circuit and superior court judges to sit in either court. — (a) The judge of the Shelby circuit court may, with the consent of the judge of a court, sit as a judge of the court in any matter as if the judge of the circuit court was an elected judge of the court.

(b) The judge of a court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if the judge of the court was an elected judge of the circuit court.

(c) The judge of a court may, with the consent of the judge of the other court, sit as a judge of the other court in any matter as if elected as the judge of the other court. [P.L.176-1988, § 38.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-5-39-14. Transfer of actions or proceedings. — Except as provided in section 10 [IC 33-5-39-10] of this chapter, the judge of the Shelby circuit court may, with the consent of the judge of a court, transfer any action or proceeding from the circuit court to the court. The judge of a court:

(1) With the consent of the judge of the circuit court, may transfer any action or proceeding from the court to the circuit court; and

(2) With the consent of the judge of the other superior court, may transfer any action or proceeding from the court to the other superior court. [P.L.176-1988, § 39.]

Effective Dates. P.L.176-1988, § 39, declared an emergency and provided that this section take effect January 1, 1989.

CHAPTER 40

ST. JOSEPH SUPERIOR COURT

SECTION.

33-5-40-1. Court established.

33-5-40-2. Name.

33-5-40-3. Seal.

33-5-40-4. Jurisdiction.

33-5-40-4.5. Standard small claims and misdemeanor division.

SECTION.

33-5-40-5. Court of record.

33-5-40-6. Rules and regulations — Incidental powers of judges.

33-5-40-7. Orders, writs, appointments, commissions.

33-5-40-8. Where court held — Provision by

SECTION.

- board of commissioners — Jurisdiction.
- 33-5-40-9 — 33-5-40-12. [Repealed.]
- 33-5-40-13. Record books.
- 33-5-40-14. Single order-book — Signature.
- 33-5-40-15. Bailiffs — Appointment, salaries.
- 33-5-40-16. Court reporters — Appointment.
- 33-5-40-17. Supreme Court rules — Applicability.
- 33-5-40-18. Jury commissioners — Appointment, duties — Failure to act, selection of jury by clerk.
- 33-5-40-19. [Repealed.]
- 33-5-40-20. Appeals to Supreme Court or Court of Appeals.
- 33-5-40-21. Process.
- 33-5-40-22. Appointment of additional personnel.
- 33-5-40-23. Presiding judge.
- 33-5-40-24. Action by entire court — Decision of majority.
- 33-5-40-25. Appointment of additional personnel — Administrative officer.
- 33-5-40-26. Transfer of cases from circuit court.
- 33-5-40-27. Transfer of cases to circuit court.
- 33-5-40-28. Authority of circuit judge to sit in superior court.
- 33-5-40-29. Repeal and saving clause.
- 33-5-40-30 — 33-5-40-32. [Repealed.]
- 33-5-40-33. Judicial nominating commission established — Provision by board of commissioners — Reimbursement of membership.
- 33-5-40-34. Composition of commission — Quorum — Chairman.
- 33-5-40-35. Nonattorney commission members — Appointment — Vacancies — Terms.
- 33-5-40-36. Attorney commission members — Terms — Vacancies.
- 33-5-40-37. Election of attorney commission members — Ballot, disposition.
- 33-5-40-38. Notice of appointment or election to commission.
- 33-5-40-39. Limitation on terms in office.
- 33-5-40-40. Vacancy in court — Notice to commission — Nomination of candidates — Meetings — Quorum — Rules.
- 33-5-40-41. Qualifications of nominees — Duty of commission to consider.
- 33-5-40-42. Written evaluations of candidates.

SECTION.

- 33-5-40-43. Withdrawal of nominee's name — Multiple vacancies — Changes in nominations.
- 33-5-40-44. Selection of judges.
- 33-5-40-45. Effective dates of appointment.
- 33-5-40-46. Terms of judges.
- 33-5-40-47. Approval of judges by electorate — Submission of question of retention.
- 33-5-40-48. Conditions of office of judge.
- 33-5-40-49. Commission on judicial qualifications.
- 33-5-40-50. Suspension, retirement, censure or removal of judges — Hearings.
- 33-5-40-51. Meetings of commission — Quorum.
- 33-5-40-52. Preliminary proceedings confidential — Formal proceedings open to public.
- 33-5-40-53. Filing of papers or giving of testimony privileged.
- 33-5-40-54. Complaints — Form.
- 33-5-40-55. Complaints — Initial inquiry and investigation — Notice — Public statements.
- 33-5-40-56. Notice of formal proceedings.
- 33-5-40-57. Answer.
- 33-5-40-58. Setting of hearing before commission.
- 33-5-40-59. Hearing — Failure of judge to appear.
- 33-5-40-60. Evidence.
- 33-5-40-61. Rights of judge at proceeding.
- 33-5-40-62. Amendments to notice or answer.
- 33-5-40-63. Hearing for additional evidence — Time — Place — Scope.
- 33-5-40-64. Recommendation of commission — Votes required.
- 33-5-40-65. Certification of commission recommendations to Supreme Court — Copy to judge.
- 33-5-40-66. Judge — Petition to modify or reject commission recommendation — Time limitation.
- 33-5-40-67. Jurisdiction and powers of commission.
- 33-5-40-68. Subpoenas — Issuance — Procedure.
- 33-5-40-69. Enforcement — Contempt — St. Joseph Circuit Court.
- 33-5-40-70. Filing of papers and pleadings, what constitutes.
- 33-5-40-71. Discovery — Demand for institution of proceedings.
- 33-5-40-72. Retirement — Removal.

33-5-40-1. Court established. — There is established a superior court in St. Joseph County, Indiana, which court shall consist of eight (8) judges. [Acts 1965, ch. 266, § 1; 1969, ch. 306, § 1; 1973, P.L. 311, § 1; 1978, P.L. 141, § 5; P.L.40-1990, § 44.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1.
Judges, appointment by the governor, Ind. Const., Art. 5, § 18.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-40-2. Name. — The court shall be named and styled St. Joseph Superior Court. [Acts 1965, ch. 266, § 2.]

33-5-40-3. Seal. — The court shall have a seal consisting of a circular disc containing the words “St. Joseph Superior Court,” an impression of which shall be spread of record upon the order-book of the court. [Acts 1965, ch. 266, § 3.]

33-5-40-4. Jurisdiction. — The court for the county has the following jurisdiction:

- (1) Original, appellate, concurrent, and coextensive jurisdiction with the circuit court in all civil cases, criminal cases, and probate matters.
- (2) Concurrent and coextensive jurisdiction with the circuit court in all cases of appeal from boards of county commissioners, and all other appellate jurisdiction vested in the circuit court.
- (3) Concurrent and coextensive jurisdiction in all matters of probate and the settlement of decedents’ estates, trusts, and guardianships.
- (4) Jurisdiction in all other subject matters actionable in the circuit court.
- (5) Original exclusive jurisdiction of all violations of ordinances of cities located in the county.
- (6) Original exclusive jurisdiction in the trial of offenses constituting violation of traffic ordinances of the cities and violations of traffic laws of the state that occur in any city of St. Joseph County.
- (7) Original jurisdiction of violations of traffic laws of the state that occur outside a city in St. Joseph County. [Acts 1965, ch. 266, § 4; 1969, ch. 306, § 2; P.L.1-1990, § 322.]

Cross References. Circuit court, jurisdiction, IC 33-4-2-1 — IC 33-4-2-4, IC 33-4-4-3.

33-5-40-4.5. Standard small claims and misdemeanor division. — The St. Joseph Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 60.]

33-5-40-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [Acts 1965, ch. 266, § 5.]

33-5-40-6. Rules and regulations — Incidental powers of judges. — The judges of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment

of contempt, and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. [Acts 1965, ch. 266, § 6.]

33-5-40-7. Orders, writs, appointments, commissions. — The judges of the courts shall have the same power, in term time or in vacation, to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus and of mandate and prohibition, to appoint receivers, masters, commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof. [Acts 1965, ch. 266, § 7.]

33-5-40-8. Where court held — Provision by board of commissioners — Jurisdiction. — (a) The St. Joseph Superior Court shall hold its sessions in the St. Joseph County courthouse in the city of South Bend and in at least one appropriate place in the city of Mishawaka. The superior court in the city of Mishawaka shall be full time and shall exercise full superior court jurisdiction in that city. The board of county commissioners of St. Joseph County shall provide and maintain in the courthouse in South Bend and in an appropriate place in Mishawaka court facilities, such facilities to include suitable and convenient courtrooms, jury rooms and offices for the judges, secretaries and official court reporters, and other necessary facilities, including all the necessary furniture and equipment for the rooms and offices of the court for the conduct of all criminal and civil business, including the necessary facilities for jury trials.

(b) The judges of the court have all jurisdiction and authority granted them by law irrespective of the city in which they are located. [Acts 1965, ch. 266, § 9; 1969, ch. 306, § 3; 1976, P.L. 136, § 1; Acts 1977, P.L. 318, § 1.]

33-5-40-9 — 33-5-40-12. [Repealed.]

Compiler's Notes. These sections, concerning salaries of judges, clerk and sheriff and their duties, liabilities, fees and procedure and court fees, were repealed by P.L.171-1984, § 80.

33-5-40-13. Record books. — The clerk, under the direction of the judge, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for the court, and all books, papers and proceedings of the court shall be kept distinct and separate from those of other courts. [Act 1965, ch. 266, § 14.]

33-5-40-14. Single order-book — Signature. — The court shall maintain a single order-book for the entire court which order-book may be signed on behalf of the court by any of the sitting judges of said court and such signature shall be due authentication of the actions of each of the judges in the court. [Acts 1965, ch. 266, § 15.]

33-5-40-15. Bailiffs — Appointment, salaries. — Each judge of the court shall appoint a bailiff for the court whose salary shall be fixed by the court and paid as now provided by law. [Acts 1965, ch. 266, § 16.]

Cross References. Salary of bailiff, IC 33-13-4-1.

33-5-40-16. Court reporters — Appointment. — Each judge of the court shall appoint a court reporter whose duties, salary and term, shall be regulated in the same manner as the court reporter of circuit court. [Acts 1965, ch. 266, § 17.]

Cross References. Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-40-17. Supreme Court rules — Applicability. — All laws and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [Acts 1965, ch. 266, § 18.]

Cross References. Change of venue from county, procedure, costs, IC 34-35-1-2.

Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-40-18. Jury commissioners — Appointment, duties — Failure to act, selection of jury by clerk. — (a) The superior court shall, in each calendar year, appoint for the next calendar year two (2) persons as jury commissioners, and the law with reference to jury commissioners appointed by the circuit court shall fully govern the jury commissioners as appointed by the superior court in all things, conditions and qualifications, and the jury commissioners shall prepare and draw the jury for the superior court, both petit and grand, as the law directs the same to be done by the jury commissioners for the circuit court. The superior court shall be governed by this law in making appointments of said jury commissioners, and the clerk of the circuit court in issuing process for the jury, and the sheriff of the county in serving the same, shall be governed, in all things, by the law made for petit juries in the circuit court. However, the superior court may order on what day the jurors shall be summoned to attend the court, and any judge of the court may order the selection and summoning of other jurors for the court whenever the same may be necessary. The jury drawn by the jury commissioners shall be the jurors, either petit or grand, for the superior court, and they shall serve the entire court, and before any judge of the court where their services may be required. However, they need not serve in any particular order in which they were drawn by the jury commissioners and,

in their selection to serve before any judge, the selection shall be on a fair and impartial basis.

(b) If at any time a jury shall not be drawn, then the clerk of the court shall select from among the properly qualified residents of such county, a jury who shall be summoned and considered in all things as a regular panel of the court. The court may call one (1) or more juries during any calendar year, and may by rule provide for how long any jury shall sit. [Acts 1965, ch. 266, § 19; 1969, ch. 306, § 4; 1981, P.L. 280, § 1.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Selection, qualification and summoning jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-9.

NOTES TO DECISIONS

ANALYSIS

Jury commissioners.

—Number.

Selection of grand jury.

Jury Commissioners.

—Number.

The fact that only two jury commissioners instead of four were appointed did not prejudice any substantial rights of the defendant.

Owen v. State, 272 Ind. 122, 396 N.E.2d 376, 72 Ind. Dec. 389 (1979).

Selection of Grand Jury.

Fact that jury commissioners did not always make selection of names in the presence of each other was not such a substantial failure to comply with statutory requirements that their selection resulted in an illegal grand jury. Wireman v. State, 432 N.E.2d 1343 (Ind.), cert. denied, 459 U.S. 992, 103 S. Ct. 350, 74 L. Ed. 2d 389 (1982).

33-5-40-19. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed

by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-40-20. Appeals to Supreme Court or Court of Appeals. — Any party may appeal to the supreme court or the court of appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law governing appeals from the circuit court to the court of appeals and the supreme court. [Acts 1965, ch. 266, § 21; P.L.3-1989, § 197.]

33-5-40-21. Process. — The process of the court shall have the seal affixed and be attested, directed, served and returned, and be in form as is, or may be, provided for process issuing from the circuit court. [Acts 1965, ch. 266, § 24.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4-4.17.

33-5-40-22. Appointment of additional personnel. — Each judge shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of his duties as judge of the court. [Acts 1965, ch. 266, § 25.]

Cross References. Appointment of additional personnel by court, IC 33-5-40-25.

33-5-40-23. Presiding judge. — The court, by rules duly adopted by the court, shall designate one (1) of the judges as presiding judge and fix the time he shall preside, and said judge shall be responsible for the operation and conduct of the court and to seeing that said court shall efficiently and judicially operate. [Acts 1965, ch. 266, § 26.]

33-5-40-24. Action by entire court — Decision of majority. — Whenever any action of the entire court is required, then the judges of the court will act in concert. In the event of disagreement, then the decision of the majority of the judges shall control. [Acts 1965, ch. 266, § 27.]

33-5-40-25. Appointment of additional personnel — Administrative officer. — The court shall, when in its opinion it shall be necessary, appoint such additional personnel for the proper administration of the court, including but not limited to an administrative officer who shall operate under the jurisdiction of the presiding judge. [Acts 1965, ch. 266, § 28.]

Cross References. Judge's appointment of additional personnel, IC 33-5-40-22.

33-5-40-26. Transfer of cases from circuit court. — The judge of the circuit court may, with the consent of this court transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [Acts 1965, ch. 266, § 29.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2.

33-5-40-27. Transfer of cases to circuit court. — Any judge of this court may, with the consent of the judge of the circuit court transfer any action, cause or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court. [Acts 1965, ch. 266, § 30.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-40-28. Authority of circuit judge to sit in superior court. — The judge of the St. Joseph Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this

court with all the rights and powers as if he were a duly elected judge of this court. [Acts 1965, ch. 266, § 31.]

33-5-40-29. Repeal and saving clause. — IC 33-5-13 (repealed January 1, 1985), but only so far as said chapter pertains to the St. Joseph Superior Court is hereby specifically repealed. All laws and parts of laws inconsistent with this chapter, but only insofar as they apply to this chapter, are hereby repealed. [Acts 1965, ch. 266, § 32; 1981, P.L. 272, § 75; P.L.3-1990, § 112.]

Compiler's Notes. IC 33-5-13, referred to in this section, was repealed by P.L.302-1983, § 6.

33-5-40-30 — 33-5-40-32. [Repealed.]

Compiler's Notes. These sections, concerning appointment and commissioning of judges and transfers of cases to Saint Joseph

Superior Court from abolished city courts, were repealed by Acts 1973, P.L. 311, § 42 and Acts 1981, P.L. 272, § 146.

33-5-40-33. Judicial nominating commission established — Provision by board of commissioners — Reimbursement of membership. — There is hereby established a judicial nominating commission for the St. Joseph superior court, the functions, responsibilities and procedures of which are set forth in sections 34 through 44 [IC 33-5-40-34 through 33-5-40-44] of this chapter.

The board of county commissioners of St. Joseph County shall provide all facilities, equipments, supplies and services as may be necessary for the administration of the duties imposed upon the commission. The members of this commission shall serve without compensation. However, the board of county commissioners of St. Joseph County shall reimburse members of this commission for their actual expenses incurred in performing their duties. [IC 33-5-40-33, as added by Acts 1973, P.L. 311, § 2; 1981, P.L. 272, § 76.]

Indiana Law Review. Women Executives, Managers and Professionals in the Indiana Criminal Justice System, 8 Ind. L. Rev. 297.

33-5-40-34. Composition of commission — Quorum — Chairman. — The judicial nominating commission, hereafter called the commission shall consist of seven (7) members, the majority of whom shall form a quorum. The chief justice of Indiana shall appoint a justice of the Indiana Supreme Court or a judge of the Indiana Court of Appeals to serve as a member and chairman of the commission until a successor is appointed. Those admitted to the practice of law in the state of Indiana and residing in St. Joseph County or maintaining their principal law office in St. Joseph County shall elect, pursuant to sections 36 and 37 [IC 33-5-40-36 and IC 33-5-40-37] of this chapter, three (3) of their number to serve as attorney members of the commission. If any attorney member of the commission terminates his residence in St. Joseph County or discontinues the maintenance of his principal law office in St. Joseph County, he shall be considered to have resigned from the commission. The three (3) remaining members of

the commission shall be persons not admitted to the practice of law, herein after referred to as “non-attorney members,” and residents of St. Joseph County. However, no more than two (2) of the non-attorney members shall be from the same political party and that the appointment of the non-attorney members of the commission shall be made under section 35 [IC 33-5-40-35] of this chapter. No more than four (4) commission members shall be from the same political party.

No member of the commission shall hold any other salaried public office, and no member shall hold an office in a political party organization. Nor shall any member of the commission be eligible for appointment to a judicial office in St. Joseph County who has, within a period of four (4) years immediately preceding such an appointment, served on the commission. If any non-attorney member of the commission terminates his residence in St. Joseph County, he shall be considered to have resigned from the commission. [IC 33-5-40-34, as added by Acts 1973, P.L. 311, § 3.]

33-5-40-35. Nonattorney commission members — Appointment — Vacancies — Terms. — (a) The appointment to membership on the commission of the nonattorney members shall be made by a selection committee consisting of the judge of the St. Joseph circuit court, the president of the board of St. Joseph County commissioners and mayors in each of the two (2) cities having the largest populations in St. Joseph County. These appointments shall be made by a majority vote of the selection committee. In the event a vacancy occurs on the commission among the nonattorney members, that fact shall be reported to the judge of the St. Joseph circuit court by the commission. Upon notification, the judge of the St. Joseph circuit court shall call into session the selection committee, which shall, by majority vote, select a person or persons not admitted to the practice of law, who shall serve the unexpired term of the vacant commission membership position and [that] this selection and appointment by the selection committee shall be made within sixty (60) days from the date that the St. Joseph circuit court is notified of the creation of the vacancy. In the event that the selection committee fails to act to fill an unexpired term of a nonattorney member of the commission within a period of sixty (60) days from the notification that the vacancy exists, the vacancy shall be filled by a majority vote of the remaining members of the commission.

(b) Not less than sixty (60) days prior to the expiration of the term of a nonattorney member of the commission, the judge of the St. Joseph circuit court shall call into session the selection committee who shall appoint by a majority vote, a person to the commission to serve a new term. In the event that the selection committee fails to act to fill an expired term of a nonattorney member of the commission by the date of expiration of the term of a nonattorney member of the commission, then in that event the remaining members on the commission shall, by majority vote, appoint a person to serve for the succeeding term. All appointments made to the commission shall be certified within ten (10) days to the clerk of the St. Joseph superior court.

(c) Each appointee of a nonattorney member to the commission, except those who fill a vacancy, shall serve for a period of four (4) years. [IC

33-5-40-35, as added by Acts 1973, P.L. 311, § 4; 1981, P.L. 272, § 77; P.L.12-1992, § 125.]

Compiler's Notes. The word "that" in the first paragraph was inclosed in brackets by the compiler as surplusage.

According to the 1990 federal census, the

two cities having the largest population in St. Joseph County are South Bend and Mishawaka.

33-5-40-36. Attorney commission members — Terms — Vacancies.

— (a) In May 1974, and each year thereafter, except those years in which no attorney member's [term expires], those admitted to the practice of law in the state of Indiana and residing in St. Joseph County hereinafter called attorney electors, shall elect three (3) of their number to serve the initial terms on the commission:

(1) One (1) member to serve for a period of two (2) years, who shall be the nominee receiving the third (3rd) highest number of votes cast;

(2) One (1) member to serve for a period of three (3) years, who shall be the nominee receiving the second (2nd) highest number of votes cast;

(3) One (1) member to serve for a period of four (4) years, who shall be the nominee receiving the highest number of votes cast. Each attorney member of the commission, following the expiration of the initial term for which he was elected in May of 1974, shall thereafter serve for a period of four (4) years. The term of each attorney member of said commission shall commence on the first (1st) day of October following his election. The election day is the date on which the ballots are counted and for the purpose of this section, shall be the third (3rd) Tuesday in May 1974, and every year thereafter, except those years in which no attorney member's term expires. Thereafter, during the month prior to the expiration of each attorney commissioner's term of office, an election shall be held to fill the succeeding four (4) year term of office.

(b) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the commission shall be filled for the unexpired term of the member creating the vacancy by a special election. [IC 33-5-40-36, as added by Acts 1973, P.L. 311, § 5.]

Compiler's Notes. The bracketed words "term expires" near the beginning of subsec-

tion (a) were substituted for "terms expire" by the compiler.

33-5-40-37. Election of attorney commission members — Ballot, disposition. — The attorney members of the commission shall be elected by the following process:

(a) The clerk of the St. Joseph Superior Court shall at least ninety (90) days prior to the date of election notify all attorneys in St. Joseph County of the upcoming election by mail, informing them that nominations must be made to the clerk of the superior court at least sixty (60) days prior to the election. The clerk shall secure a list of all attorneys in the county and their correct addresses from the clerk of the Supreme Court of the state of Indiana.

(b) A nomination in writing accompanied by a signed petition of ten (10) attorney electors, and the written consent of the qualified nominee shall be filed by an attorney elector or group of attorney electors residing in St. Joseph County, by mail or otherwise, in the office of the clerk of St. Joseph Superior Court at least sixty (60) days prior to the election.

(c) The clerk of St. Joseph Superior Court shall prepare and print ballots containing the names and residence addresses of all attorney nominees whose written nominations, petitions and written statements of consent have been received sixty (60) days prior to the election.

The ballot shall read:

ST. JOSEPH SUPERIOR COURT
NOMINATING COMMISSION BALLOT

To be cast by individuals residing in St. Joseph County and admitted to the practice of law in Indiana. Vote for one (1) of the following candidates for the term commencing:

(Insert Date)

() (Name) (Address)

() (Name) (Address)

() (etc.) (etc.)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the clerk of St. Joseph Superior Court not later than _____ (insert date).

DESTROY BALLOT IF NOT USED

(d) The nominee receiving the most votes shall be elected.

(e) The clerk shall also supply with each ballot distributed by him a certificate, to be completed and signed and returned by the attorney elector voting that ballot, certifying that he is admitted to the practice of law in Indiana, and that he resides in St. Joseph County and that he voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.

(f) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope shall not be opened until the counting of the ballots.

(g) The clerk of St. Joseph Superior Court shall mail a ballot and its accompanying material to all qualified attorney electors at least two (2) weeks before the date of election.

(h) Upon receiving the completed ballots and the accompanying certificates, the clerk shall insure that the certificates have been completed in compliance with this chapter. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(i) The clerk of St. Joseph Superior Court, with the assistance of the St. Joseph County election board shall open and canvass all ballots after

four o'clock (4:00) P.M. on the day of election in the office of the clerk of St. Joseph Superior Court. No ballots received after four o'clock (4:00) P.M. are to be counted. Upon canvassing the ballots the clerk shall place all ballots back in their package. These, along with the certificates, shall be retained in his office for a period of six (6) months, and he shall permit no one to inspect them except upon an order of the Indiana Court of Appeals.

(j) In any election held for selection of attorney members of the commission, in case two (2) or more nominees are tied so that one (1) additional vote cast for one (1) of them would give him a plurality, the canvassers shall resolve the tie by lot and the winner of the lot shall be deemed to have been elected. [IC 33-5-40-37, as added by Acts 1973, P.L. 311, § 6.]

33-5-40-38. Notice of appointment or election to commission. —

After the attorney members of the commission have been elected, and after the names of the non-attorney commissioners appointed by the selection committee have been certified to the secretary of state, clerk of the supreme court, and the clerk of St. Joseph Superior Court under this chapter, the clerk of St. Joseph Superior Court shall by regular mail notify the members of the commission of their election or appointment, and shall so notify the chairman of the judicial nominating commission of the same. [IC 33-5-40-38, as added by Acts 1973, P.L. 311, § 7.]

33-5-40-39. Limitation on terms in office. — No person who has been elected or appointed to a full four (4) year term upon the commission may succeed himself or be eligible for election or appointment to the commission for a period of four (4) years from the expiration of the term to which he was elected or appointed. [IC 33-5-40-39, as added by Acts 1973, P.L. 311, § 8.]

33-5-40-40. Vacancy in court — Notice to commission — Nomination of candidates — Meetings — Quorum — Rules. — (a) When a vacancy occurs in the St. Joseph superior court, the clerk of the court shall promptly notify the chairman of the commission of the vacancy. The chairman shall call a meeting of the commission within ten (10) days following this notice. The commission shall submit its nominations of five (5) candidates for each vacancy and certify them to the governor as promptly as possible, and in any event not later than sixty (60) days from the time the vacancy occurs. When it is known that a vacancy will occur at a definite future date within the term of the governor then serving, but the vacancy has not yet occurred, the clerk shall notify the commission immediately, and the commission may within fifty (50) days of the notice of vacancy make its nominations and submit to the governor the names of five (5) persons nominated for the forthcoming vacancy.

(b) Meetings of the commission shall be called by its chairman, or in the event of his failure to call a necessary meeting, upon the call of any four (4) members of the commission. The chairman, whenever he deems a meeting necessary, or upon the request by any four (4) members of the commission

for a meeting, shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(c) Meetings of the commission are to be held at such a place in the St. Joseph County courthouse in South Bend, Indiana, as the clerk of the St. Joseph superior court may arrange.

(d) The commission shall act only at a meeting, and may act only by the concurrence of a majority of its members attending a meeting. Four (4) members are required to constitute a quorum at a meeting. The commission shall have power to adopt reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties. [IC 33-5-40-40, as added by Acts 1973, P.L. 311, § 9; P.L.18-1995, § 94.]

33-5-40-41. Qualifications of nominees — Duty of commission to consider. — (a) The commission shall submit only the names of the five (5) most highly qualified candidates from among all those eligible individuals considered. To be eligible for nomination as a judge of the St. Joseph superior court, a person must be domiciled in the county of St. Joseph, a citizen of the United States, and admitted to the practice of law in the courts of this state.

(b) In abiding by the mandate in subsection (a) of this section, the commission shall evaluate in writing each eligible individual on the following factors:

- (1) Law school record, including any academic honors and achievements;
- (2) Contribution to scholarly journals and publications, legislative draftings, and legal briefs;
- (3) Activities in public service, including:
 - (i) Writings and speeches concerning public or civic affairs which are on public record, including but not limited to campaign speeches or writing, letters to newspapers, testimony before public agencies;
 - (ii) Efforts and achievements in improving the administration of justice;
 - (iii) Other conduct relating to his profession.
- (4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge;
- (5) Probable judicial temperament;
- (6) Physical condition, including age, stamina, and possible habitual intemperance;
- (7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate patience, decisiveness and dedication;
- (8) Membership on boards of directors, financial interest, and any other consideration which might create conflict of interest with a judicial office;
- (9) Any other pertinent information which the commission feels is important in selecting the best qualified individuals for judicial office.

(c) These written evaluations shall not be made on an individual until he states in writing that he desires to hold a judicial office that is or will be created by vacancy.

(d) The political affiliations of any candidate shall not be considered by the commission in evaluating and determining which eligible candidates shall be recommended to the governor for a vacancy on the St. Joseph superior court. [IC 33-5-40-41, as added by Acts 1973, P.L. 311, § 10; P.L.18-1995, § 95.]

33-5-40-42. Written evaluations of candidates. — The commission shall submit with the list of five (5) nominees to the governor its written evaluation of the qualifications of each candidate, and these names and written evaluations shall be publicly disclosed. Every eligible candidate whose name was not submitted to the governor shall have access to any evaluation on him by the commission and the right to make the evaluation public. Otherwise, the evaluation shall remain confidential. If the commission should determine that there are less than five (5) persons qualified under section 44 [IC 33-5-40-44] of this chapter, they must submit a lesser number under section 44 of this chapter. [IC 33-5-40-42, as added by Acts 1973, P.L. 311, § 11; P.L.18-1995, § 96.]

33-5-40-43. Withdrawal of nominee's name — Multiple vacancies — Changes in nominations. — After the commission has nominated and submitted to the governor the names of five (5) persons for appointment to fill a vacancy of the St. Joseph superior court, any name or names may be withdrawn for a cause deemed by the commission to be of substantial nature affecting the nominee's qualifications to hold office, and another name or names may be substituted therefor at any time before the appointment is made to fill the vacancy. If any nominee dies, or requests in writing that his name be withdrawn, the commission shall nominate another person to replace him. Whenever there are existing at the same time two (2) or more vacancies on the court, the commission shall nominate and submit to the governor a list of five (5) different persons for each of the vacancies. The commission may, in its discretion and before an appointment is made, withdraw the lists of nominations, change the names of any persons nominated from one (1) list to another and resubmit them as so changed, or may substitute a new name for any of those previously nominated. [IC 33-5-40-43, as added by Acts 1973, P.L. 311, § 12; P.L.18-1995, § 97.]

33-5-40-44. Selection of judges. — A vacancy occurring in the St. Joseph superior court shall be filled by appointment of the governor from a list of nominees presented to him by the judicial nominating commission. If the governor fails to make an appointment from the list within sixty (60) days from the day it is presented to him, the appointment shall be made by the chief justice, or the acting chief justice, of the supreme court of Indiana from the same list presented to the governor.

The governor shall make all appointments to the St. Joseph superior court without regard to the political affiliation of any of the nominees submitted

to him. Further in the interest of justice, the governor shall consider only those qualifications of the nominees included in section 41 [IC 33-5-40-41] of this chapter.

If the St. Joseph County judicial nominating commission shall by a vote of any five (5) of its members determine that, of the persons considered for any existing or expected vacancy in the St. Joseph superior court, less than five (5) are qualified for judicial office, within the scope of this chapter, it shall certify that determination to the governor together with the name or names of the person or persons whom it has found to be qualified as under this chapter; and in that event, the governor, chief justice or acting chief justice shall make the selection or, if but one name is submitted, make the appointment forthwith. [IC 33-5-40-44, as added by Acts 1973, P.L. 311, § 13; P.L.18-1995, § 98.]

33-5-40-45. Effective dates of appointment. — An appointment by the governor, chief justice, or acting chief justice, as required by section 44 [IC 33-5-40-44] of this chapter to the St. Joseph County Superior Court shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if no vacancy yet exists at the date of the appointment. [IC 33-5-40-45, as added by Acts 1973, P.L. 311, § 14.]

33-5-40-46. Terms of judges. — (a) Each judge appointed shall serve an initial term, which shall commence on the effective date of his appointment and shall continue through the last day of December in the year of the general election which follows the expiration of two (2) years from the effective date of his appointment.

(b) Thereafter, unless rejected by the electorate of St. Joseph County under this chapter, each judge of the St. Joseph Superior Court shall serve successive six (6) year terms. Each successive six (6) year term shall commence on the first (1st) day of January following the expiration of the preceding six-year term, as the case may be, and shall continue for a period of six (6) years. [IC 33-5-40-46, as added by Acts 1973, P.L. 311, § 15.]

33-5-40-47. Approval of judges by electorate — Submission of question of retention. — (a) The question of the retention in office or rejection of each judge of the St. Joseph superior court shall be submitted to the electorate of St. Joseph County at the general election immediately preceding expiration of the term of that judge.

(b) In the event that any judge subject to this chapter does not desire to serve a further term, the judge shall so notify in writing the clerk of the St. Joseph circuit court at least sixty (60) days prior to the general election immediately preceding expiration of the judge's term in which case the question of the judge's retention in office or rejection shall not be submitted to the electorate and the office shall be vacant at the expiration of the term.

(c) The St. Joseph County election board shall submit the question of the retention in office or rejection of any judge to the electorate of St. Joseph County. The submission of this question shall be subject to the provisions of IC 3 that are not inconsistent with this chapter.

(d) At the general election the question of the retention in office or rejection of a judge shall be submitted to the electorate of St. Joseph County in the form prescribed by IC 3-11-2 and must state "Shall Judge (insert name) of the St. Joseph superior court be retained in office for an additional term?"

(e) In the event that a majority of the ballots cast by the electors voting on any such question shall be "No", the judge whose name appeared on such question shall be rejected. The office of the rejected judge shall be vacant on January 1 following the rejection. The vacancy shall be filled by appointment of the governor pursuant to section 44 [IC 33-5-40-44] of this chapter. The name of the rejected judge shall not be included among those submitted to the governor. However, the judge's rejection shall not disqualify a rejected judge from being considered for another judicial office then vacant or thereafter becoming vacant. [IC 33-5-40-47, as added by Acts 1973, P.L. 311, § 16; P.L.3-1987, § 535.]

33-5-40-48. Conditions of office of judge. — During his term of office, no judge of the St. Joseph Superior Court shall engage in the practice of law, run for an elective office other than a judicial office, directly or indirectly make any contributions to, or hold any office in, a political party or organization; nor shall he take part in any political campaign except if he be a candidate for retention in judicial office and, in that event, his campaign participation shall be absolutely devoid of partisan association and shall be limited to activities designed to acquaint the electorate with his judicial record.

Failure to comply with this section shall be sufficient cause for the commission on judicial qualifications created by this chapter to recommend to the Supreme Court of Indiana that such judge be censured or removed from office. [IC 33-5-40-48, as added by Acts 1973, P.L. 311, § 17.]

Cross References. Jurisdiction of commission on judicial qualifications, prohibitions against political activity, IC 33-2.1-6-3.

33-5-40-49. Commission on judicial qualifications. — There is hereby created a commission on judicial qualifications for the St. Joseph Superior Court, whose membership shall be the same as that of the judicial nominating commission provided for in section 33 [IC 33-5-40-33] of this chapter. The commission shall have authority to employ special counsel in any proceedings it undertakes pursuant to the responsibilities imposed upon it by this chapter. [IC 33-5-40-49, as added by Acts 1973, P.L. 311, § 18.]

Compiler's Notes. IC 33-5-40-49 — IC P.L. 305, § 1 (IC 33-2.1-6-1 — IC 33-2.1-6-30). 33-5-40-72 may be superseded by Acts 1973, See specifically IC 33-2.1-6-3.

33-5-40-50. Suspension, retirement, censure or removal of judges — Hearings. — (a) On recommendation of the commission the Supreme Court of Indiana may suspend a judge of the St. Joseph Superior Court from office without salary when in any court in the United States he enters a plea

of guilty or of [nolo contendere] to, or is found guilty of, any crime punishable as a felony under the laws of the state of Indiana or of the United States, or of any other crime that involves moral turpitude under that law. If his conviction is reversed, suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction is affirmed or otherwise becomes final, the Supreme Court shall remove him from office.

(b) On recommendation of the commission, the Supreme Court may:

(1) Retire a judge of the St. Joseph Superior Court for disability that seriously interferes with the performance of his duties and is likely to become permanent, and;

(2) Censure or remove a judge of the St. Joseph Superior Court for conduct occurring not more than six (6) years prior to the commencement of his current term, when the conduct constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice or which brings or tends to bring judicial office into disrepute.

(c) When the Supreme Court of Indiana receives any recommendation from the commission, it shall hold a hearing, at which the affected judge is entitled to be present, and shall make a determination as shall be required. The Supreme Court of Indiana shall make rules regarding the convening and conduction of such hearings, which shall, upon request of the judge whom it concerns, be public. [IC 33-5-40-50, as added by Acts 1973, P.L. 311, § 19.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

The words "nolo contendere" were substituted for "nolo countendere" by the compiler in subsection (a).

33-5-40-51. Meetings of commission — Quorum. — (a) The judicial qualifications commission shall meet from time to time as may be necessary to discharge its statutory responsibilities. Meetings of the commission shall be called in the same manner as prescribed for the judicial nominating commission. A quorum for the transaction of business shall be four (4) members of the commission.

(b) The clerk of the St. Joseph Circuit Court shall make such arrangements for a meeting place in St. Joseph County as the commission may request.

(c) The commission shall act only at a meeting. The commission shall have the power to adopt reasonable and proper rules and regulations for the conduct of its meetings and discharge of its duties. [IC 33-5-40-51, as added by Acts 1973, P.L. 311, § 20.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-52. Preliminary proceedings confidential — Formal proceedings open to public. — (a) All papers filed with and proceedings had before the commission prior to the institution of formal proceedings shall be

confidential unless the judge against whom a complaint has been filed elects to have the information divulged, or unless the commission elects to answer publicly disseminated statements issued by any complainant.

(b) All papers filed with the commission at the time of or after the institution of formal proceedings shall be open for public inspection at all reasonable times. Records of commission proceedings shall be open for public inspection at all reasonable times. All hearings and proceedings before the commission shall be open to the public. [IC 33-5-40-52, as added by Acts 1973, P.L. 311, § 21.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-53. Filing of papers or giving of testimony privileged. — The filing of papers with or the giving of testimony before the commission under this chapter shall be absolutely privileged in any action for defamation. [IC 33-5-40-53, as added by Acts 1973, P.L. 311, § 22.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-54. Complaints — Form. — Complaints directed to the commission on judicial qualifications need not be in writing. No specified form of complaint shall be required if presented in writing. [IC 33-5-40-54, as added by Acts 1973, P.L. 311, § 23.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-55. Complaints — Initial inquiry and investigation — Notice — Public statements. — (a) Any citizen of the state of Indiana shall have the right at all times to complain to the commission on judicial qualifications with reference to the activities, fitness or qualifications of any judge of the St. Joseph Superior Court. Upon receiving a complaint or request, the commission shall make such an initial inquiry as is necessary to determine if a complaint is founded and not frivolous. The commission, without receiving a complaint, may make an initial inquiry on its own motion.

(b) If the commission deems it necessary as a result of its initial inquiry to conduct further investigation, the judge involved may then be notified of the investigation, the nature of the charge, the complaint which shall have been reduced to writing, and the name of the person making the complaint, if any, or that the investigation is on the commission's own motion and the judge shall be afforded reasonable opportunity in the course of the investigation to present such matters as he may choose. When this notice is given, it shall be by pre-paid registered or certified mail addressed to the judge at his chambers and at his last known address.

If the investigation does not disclose sufficient cause to warrant further proceedings the judge may be so notified. The commission shall have the power to make investigations by members of the commission or by special investigators employed by the commission; to hold confidential hearings with the person or persons filing the complaint; or with his or their agents or attorneys; and to hold confidential hearings with the judge involved in the complaint.

(c) If the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings and if the complainant subsequently issues any statement or statements of any kind for public dissemination relating to the activities or actions of the commission, the commission shall have the right to answer that statement or statements by reference to so much of the record of its proceedings or results of its investigation as it deems necessary. [IC 33-5-40-55, as added by Acts 1973, P.L. 311, § 24.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-56. Notice of formal proceedings. — [(a)] After the investigation has been completed if the commission concludes that formal proceedings should be instituted it shall give written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. These proceedings shall be entitled:

"BEFORE THE ST. JOSEPH COUNTY JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No. _____"

(b) The notice shall be issued in the name of the commission and specify in ordinary and concise language the charges against the judge and the alleged facts upon which the charges are based, and shall advise the judge of his right to file a written answer to the charges against him within twenty (20) days after service of the notice upon him. No charge shall be sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge. A copy of the notice shall be filed in the office of the commission.

(c) The notice shall be made upon the judge by registered or certified mail addressed to the judge at his chambers and his last known address. [IC 33-5-40-56, as added by Acts 1973, P.L. 311, § 25.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

The bracketed subsection "(a)" designation was inserted by the compiler.

33-5-40-57. Answer. — Within twenty (20) days after service of the notice of formal proceedings the judge may file with the commission a signed original and one copy of an answer, and shall serve a copy on the counsel by mail. [IC 33-5-40-57, as added by Acts 1973, P.L. 311, § 26.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-58. Setting of hearing before commission. — Upon filing of an answer or upon the expiration of the time for its filing, the commission shall order a hearing to be held before it concerning the discipline, retirement or removal of the judge. The commission shall set an approximate time and a place for a hearing and shall give notice of the hearing by registered or certified mail to the judge and to the counsel at least twenty (20) days prior to the date set. [IC 33-5-40-58, as added by Acts 1973, P.L. 311, § 27.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-59. Hearing — Failure of judge to appear. — [(a)] At the time and place set for hearing, the commission may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The failure of the judge to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, retirement or removal. In any proceeding for involuntary retirement for disability, the failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission may be considered, unless it appears that the failure was due to circumstances beyond his control.

(c) The proceedings at the hearing shall be reported verbatim.

(d) Not less than four (4) members of the commission shall be present when the evidence is produced. [IC 33-5-40-59, as added by Acts 1973, P.L. 311, § 28.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

The bracketed subsection "(a)" designation was inserted by the compiler.

33-5-40-60. Evidence. — At a hearing before the commission the evidentiary rules of the courts of this state shall apply. [IC 33-5-40-60, as added by Acts 1973, P.L. 311, § 29.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-61. Rights of judge at proceeding. — (a) In formal proceedings involving the judge's discipline, retirement, or removal, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the expense of the commission, a copy shall be furnished without cost to the judge. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, whenever provision is made for giving notice or sending any matter to the judge, that notice or matter shall be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing, and a copy is mailed to the judge's attorney of record.

(d) If the judge has been adjudged incapacitated under IC 29-3, the guardian may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, a copy of the notice or matter also shall be served, given, or sent to the guardian. [IC 33-5-40-61, as added by Acts 1973, P.L. 311, § 30; P.L.33-1989, § 112.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-62. Amendments to notice or answer. — At any time prior to determination of the issues, the commission may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby. [IC 33-5-40-62, as added by Acts 1973, P.L. 311, § 31.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-63. Hearing for additional evidence — Time — Place — Scope. — The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the hearing in St. Joseph County and shall indicate the matters on which the evidence is to be taken. A copy of the order shall be sent by registered or certified mail to the judge and to the counsel at least ten (10) days prior to the date of the hearing. [IC 33-5-40-63, as added by Acts 1973, P.L. 311, § 32.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-64. Recommendation of commission — Votes required. — If the commission finds good cause, it shall recommend to the Supreme

Court the censure, retirement or removal of the judge. The affirmative vote of four (4) members of the commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, retirement or removal of a judge. [IC 33-5-40-64, as added by Acts 1973, P.L. 311, § 33.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-65. Certification of commission recommendations to Supreme Court — Copy to judge. — Upon making a determination recommending the censure, retirement or removal of a judge, the commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the commission, together with the transcript and findings and conclusions, with the clerk of the Supreme Court and shall promptly mail to the judge and to the counsel notice of the filing, together with a copy of the recommendation, finding and conclusions. [IC 33-5-40-65, as added by Acts 1973, P.L. 311, § 34.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-66. Judge — Petition to modify or reject commission recommendation — Time limitation. — (a) A petition to the Supreme Court to modify or reject the recommendation of the commission for censure, retirement or removal of a judge may be filed by the judge within thirty (30) days after the filing with the clerk of the Supreme Court of the certified copy of the commission's recommendation.

The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief together with proof of service on the commission of two (2) copies, and on the counsel of one (1) copy, of the petition and the brief. Within twenty (20) days after service of petitioner's brief the commission shall file a respondent's brief and serve a copy thereof on the judge. Within twenty (20) days after service of respondent's brief the petitioner may file a reply brief, two (2) copies of which shall be served on the commission and one (1) copy shall be served on the counsel.

(b) Failure to file a petition within the time provided shall be deemed a consent to the determination on the merits based upon the record filed by the commission.

(c) To the extent necessary to implement this section and if not inconsistent herewith, the Indiana Rules of Appellate Procedure shall be applicable to reviews by the Supreme Court of commission proceedings. [IC 33-5-40-66, as added by Acts 1973, P.L. 311, § 35.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-67. Jurisdiction and powers of commission. — The commission shall have jurisdiction and powers as are necessary to conduct the proper and speedy deposition of any investigation or hearing, including the power to compel the attendance of witnesses to take or cause to be taken the disposition of witnesses and to order the production of books, records or other documentary evidence. Any member of the commission shall have the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the commission. [IC 33-5-40-67, as added by Acts 1973, P.L. 311, § 36.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-68. Subpoenas — Issuance — Procedure. — Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceeding shall be issued as follows: subpoenas for the attendance of witnesses and the production of documentary evidence between [before] the commission or for discovery shall be issued by the chairman of the commission and shall be served in the manner provided by law for the service of process. [IC 33-5-40-68, as added by Acts 1973, P.L. 311, § 37.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

The bracketed word "before" was inserted by the compiler, as that appears to be the intended language.

33-5-40-69. Enforcement — Contempt — St. Joseph Circuit Court. — Where in any proceeding before the commission, any witness shall fail or refuse to attend upon subpoena issued by the commission or any of their representatives, or appearing, shall refuse to testify or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of his testimony and the production of the books and papers required shall be enforced by the St. Joseph Circuit Court. [IC 33-5-40-69, as added by Acts 1973, P.L. 311, § 38.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-70. Filing of papers and pleadings, what constitutes. — All papers and pleadings filed with the chairman of the commission at his office shall be considered filed with the commission. [IC 33-5-40-70, as added by Acts 1973, P.L. 311, § 39.]

Compiler's Notes. This section may be superseded. See compiler's note to IC 33-5-40-49.

33-5-40-71. Discovery — Demand for institution of proceedings. — (a) In all formal proceedings discovery shall be available to the commission and to the judge in accordance with the Indiana Rules of Civil Procedure.

Any motions requesting court orders for discovery shall be made to the St. Joseph Circuit Court.

(b) In all formal proceedings before the commission the counsel shall furnish to the judge not less than twenty (20) days prior to any hearing the following:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the commission which are relevant to the subject matter of the hearing and which have not previously been furnished the judge.

(2) Copies of all documentary evidence which the counsel expects to offer in evidence at the hearing. The testimony of any witness, except if offered in rebuttal or for impeachment, whose name and address has not been furnished to the judge, and documentary evidence, copies of which have not been so furnished to the judge, as provided above, shall not be admissible in evidence at the hearing over the objection of the judge. After formal proceedings have been instituted, the judge may request in writing that the counsel furnish to the judge the names and addresses of all witnesses then or thereafter known to the counsel who have information which may be relevant to any charge against the judge and to any defense of the judge with respect thereto. The counsel shall also furnish copies of such written statements, transcripts of testimony and documentary evidence as are then or thereafter known to the counsel and are then or thereafter in the possession of the counsel or the commission, which are relevant to any charges or defense and which have not previously been furnished the judge. The counsel shall comply with a request within ten (10) days after receipt of the request and thereafter within ten (10) days after any information or evidence shall become known to the counsel.

(c) During the course of an investigation by the commission, the judge whose conduct is being investigated can demand in writing that the commission either institute formal proceedings against him or enter a formal finding that there is not probable cause to believe that he is guilty of any misconduct and the commission shall within sixty (60) days after his demand comply therewith. A copy of the demand shall be filed in the Supreme Court and shall be a matter of public record. If, after a demand the commission finds that there is not probable cause, that finding shall be filed in the Supreme Court of Indiana and be a matter of public record. [IC 33-5-40-71, as added by Acts 1973, P.L. 311, § 40; 1977, P.L. 2, § 83.]

33-5-40-72. Retirement — Removal. — (a) Retirement. When a judge of a St. Joseph County court is retired by the Supreme Court under this chapter and on those grounds set forth in section [sections] 48 and 50 [IC 33-5-40-48 and IC 33-5-40-50] of this chapter, he shall be considered to have retired voluntarily. In these situations, nothing in this chapter shall be construed to authorize any encroachment upon or impairment of any rights of the judge or his surviving spouse, now or hereafter existing under any constitutional or statutory retirement program.

(b) Removal. A judge of St. Joseph County court who is removed from office by the Supreme Court on those grounds set forth in sections 48 and 50 of this chapter, shall be ineligible for judicial office and, pending further order of the Supreme Court of Indiana, he shall be suspended from the practice of law in the state of Indiana. [IC 33-5-40-72, as added by Acts 1973, P.L. 311, § 41.]

Compiler’s Notes. This section may be superseded. See compiler’s note to IC 33-5-40-49.

The bracketed word “sections” in subsection (a) was inserted by the compiler.

CHAPTER 40.1
STEBEN SUPERIOR COURT

- SECTION.
33-5-40.1-1. Court created — Seal.
33-5-40.1-2. Judge.
33-5-40.1-3. Jurisdiction.
33-5-40.1-4. Powers of judge.
33-5-40.1-5. Bailiff and court reporter.
33-5-40.1-6. Books.
33-5-40.1-7. Sessions — Rooms and facilities.
33-5-40.1-8. Jury commissioners.

- SECTION.
33-5-40.1-9. Transfer of actions or proceedings.
33-5-40.1-10. Authority of circuit and superior court judges to sit in either court.
33-5-40.1-11. Standard small claims and misdemeanor division.
33-5-40.1-12. Appointment of magistrate.

33-5-40.1-1. Court created — Seal. — There is established a court of record to be known as the Steuben superior court (referred to as the court in this chapter). The court may have a seal containing the words “Steuben Superior Court, Steuben County, Indiana.” Steuben County comprises the judicial district of the court. [P.L.188-1986, § 20.]

33-5-40.1-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Steuben County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Steuben County;
- (2) Under seventy (70) years of age at the time of taking office; and
- (3) Be admitted to the bar of Indiana.

[P.L.188-1986, § 20.]

33-5-40.1-3. Jurisdiction. — The court has the same jurisdiction as the Steuben circuit court. [P.L.188-1986, § 20.]

33-5-40.1-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Steuben circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.188-1986, § 20.]

33-5-40.1-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official

court reporter for the Steuben circuit court. Their salaries shall be paid monthly out of the treasury of Steuben County as provided by law. [P.L.188-1986, § 20.]

33-5-40.1-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.188-1986, § 20.]

33-5-40.1-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Steuben County courthouse in Angola, Indiana, or in such other places in the county as the Steuben County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Steuben County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.188-1986, § 20.]

33-5-40.1-8. Jury commissioners. — The jury commissioners appointed by the judge of the Steuben circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Steuben circuit court. The grand jury selected for the Steuben circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.188-1986, § 20.]

33-5-40.1-9. Transfer of actions or proceedings. — The judge of the Steuben circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.188-1986, § 20.]

33-5-40.1-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Steuben circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with the consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.188-1986, § 20.]

33-5-40.1-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.188-1986, § 20.]

33-5-40.1-12. Appointment of magistrate. — (a) The judges of the Steuben circuit and superior courts may jointly appoint one (1) full-time magistrate under IC 33-4-7 to serve the circuit and superior courts.

(b) The magistrate continues in office until removed by the judges of the Steuben circuit and superior courts. [P.L.18-1995, § 99.]

CHAPTER 40.5
SULLIVAN SUPERIOR COURT

SECTION.

- 33-5-40.5-1. Court created — Seal — Jurisdiction.
- 33-5-40.5-2. Judge — Election — Term — Eligibility.
- 33-5-40.5-3. Concurrent jurisdiction with circuit court.
- 33-5-40.5-4. Power of judge concurrent with circuit court power.
- 33-5-40.5-5. Bailiff and court reporter — Salaries.
- 33-5-40.5-6. Books.

SECTION.

- 33-5-40.5-7. Sessions — Rooms and facilities — Funds for maintenance.
- 33-5-40.5-8. Jury commissioners.
- 33-5-40.5-9. Transfer of actions or proceedings.
- 33-5-40.5-10. Authority of circuit and superior court judges to sit in either court.
- 33-5-40.5-11. Standard small claims and misdemeanor division.

33-5-40.5-1. Court created — Seal — Jurisdiction. — There is established a court of record to be known as the Sullivan superior court (referred to as “the court” in this chapter). The court may have a seal containing the words “Sullivan Superior Court, Sullivan County, Indiana.” Sullivan County comprises the judicial district of the court. [P.L.176-1988, § 40.]

Effective Dates. P.L.176-1988, § 39, declared an emergency and provided that the chapter take effect January 1, 1989.

33-5-40.5-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Sullivan County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

- (b) To be eligible to hold office as judge of the court, a person must:
 - (1) Be a resident of Sullivan County;
 - (2) Be less than seventy (70) years of age at the time of taking office; and
 - (3) Be admitted to the practice of law in Indiana.

[P.L.176-1988, § 40.]

33-5-40.5-3. Concurrent jurisdiction with circuit court. — The court has the same jurisdiction as the Sullivan circuit court. [P.L.176-1988, § 40.]

33-5-40.5-4. Power of judge concurrent with circuit court power. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Sullivan circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.176-1988, § 40.]

33-5-40.5-5. Bailiff and court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Sullivan circuit court. Their salaries shall be

paid monthly out of the treasury of Sullivan County as provided by law. [P.L.176-1988, § 40.]

33-5-40.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.176-1988, § 40.]

33-5-40.5-7. Sessions — Rooms and facilities — Funds for maintenance. — The court shall hold its sessions in the Sullivan County courthouse in Sullivan, Indiana, or in such other places in the county as the Sullivan County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Sullivan County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.176-1988, § 40.]

33-5-40.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the Sullivan circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Sullivan circuit court. The grand jury selected for the Sullivan circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.176-1988, § 40.]

33-5-40.5-9. Transfer of actions or proceedings. — The judge of the Sullivan circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.176-1988, § 40.]

33-5-40.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Sullivan circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.176-1988, § 40.]

33-5-40.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.176-1988, § 40.]

CHAPTER 41

TIPPECANOE SUPERIOR COURT

SECTION.

33-5-41-1. Court created — Judge — Term —
Election — Name of court.
33-5-41-2. Seal.

SECTION.

33-5-41-3, 33-5-41-4. [Repealed.]
33-5-41-5. Where court held — Provision by
board of commissioners.

- SECTION.
- 33-5-41-6. Jurisdiction.
 - 33-5-41-7. Process.
 - 33-5-41-8. Court of record.
 - 33-5-41-9. Process — Authority of court or judge.
 - 33-5-41-10. Orders, writs, appointments, commissions.
 - 33-5-41-11. Rules and regulations — Incidental powers of judge.

- SECTION.
- 33-5-41-12. Judge interested — Removal of cause.
 - 33-5-41-13. Change of venue.
 - 33-5-41-14. Record books.
 - 33-5-41-15, 33-5-41-16. [Repealed.]
 - 33-5-41-17. Appeals.
 - 33-5-41-18. [Repealed.]

33-5-41-1. Court created — Judge — Term — Election — Name of court. — There hereby is established a superior court in the county of Tippecanoe, Indiana, which shall consist of one (1) judge, who shall hold his office for six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified, if he shall so long behave well. The judge shall be elected every six (6) years at the general election. The court shall be known as the “Superior Court of Tippecanoe County.” [Acts 1875, ch. 39, § 1, p. 55; 1976, P.L. 133, § 27.]

Cross References. Beginning and ending of terms, IC 33-13-5-1.	Judge, admission to practice of law as qualification, IC 33-13-9-1.
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33-5-41-2. Seal. — The judge of said court shall cause to be provided a seal for said court, which shall contain on its face the words “Superior Court of Tippecanoe County,” and such device as he may think proper. A description of said seal, together with an impression of the same, shall be spread upon the order-book of said court: Provided, That until such seal is procured, the clerk may seal with his private seal in scroll, all process, which, by law, is required to be sealed. [Acts 1875, ch. 39, § 2, p. 55.]

33-5-41-3, 33-5-41-4. [Repealed.]

Compiler’s Notes. These sections, concerning fees and duties of clerk and sheriff, were repealed by P.L.171-1984, § 80.

33-5-41-5. Where court held — Provision by board of commissioners. — The said court shall hold its sessions at the courthouse of the county, or at such other convenient place as the board of county commissioners or the judge of said court may provide at the county seat. [Acts 1875, ch. 39, § 5, p. 55.]

33-5-41-6. Jurisdiction. — Said court shall have the same original and appellate jurisdiction now possessed by the Tippecanoe Circuit Court in civil and criminal cases, but not in matters of probate or juvenile jurisdiction. [Acts 1875, ch. 39, § 10, p. 55; 1965, ch. 10, § 1.]

33-5-41-7. Process. — The process of said court shall have the seal affixed, and be attested, directed, served and returned, and be in form, as is or may be provided for process issuing from the circuit court. [Acts 1875, ch. 39, § 11, p. 55.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-41-8. Court of record. — Said court shall be a court of record, and of general jurisdiction, and its judgments, decrees, orders and proceedings shall have the same force and effect as those of the circuit court, and shall be enforced in the same manner. [Acts 1875, ch. 39, § 12, p. 55.]

33-5-41-9. Process — Authority of court or judge. — The said court, or the judge thereof in vacation, shall have power to issue and direct all process to courts of inferior jurisdiction, and to corporations and individuals, which shall be necessary in exercising the jurisdiction hereby conferred, and for the regular execution of the law, and to make all proper judgments, sentences, decrees, orders, and injunctions, and to issue all process and executions, and to do such other acts as may be necessary to carry into effect the same, in conformity with the constitution and laws of the state. [Acts 1875, ch. 39, § 13, p. 55.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-41-10. Orders, writs, appointments, commissions. — The judge of said court shall have the same power, in term time, or in vacation, to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus, and of mandate, and prohibition, to appoint receivers, master commissioners, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of said court, as is now, or may hereafter be conferred on circuit courts, or the judges thereof. [Acts 1875, ch. 39, § 14, p. 55.]

Compiler's Notes. The term of court for all courts in the state shall be the calendar year and existing term time and vacation time was abolished effective January 1, 1968. See IC 33-1-6-1.

Cross References. Circuit court, jurisdiction and powers, IC 33-4-2-1 — IC 33-4-2-4, IC 33-4-4-3.

33-5-41-11. Rules and regulations — Incidental powers of judge. — The judge of said court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the power incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and enforcing its orders, and the judge of said court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of the records and proceedings in said court. [Acts 1875, ch. 39, § 15, p. 55.]

33-5-41-12. Judge interested — Removal of cause. — If the judge of said court shall be interested, or in the progress of the cause shall become interested, in the event of any action or matter pending in said court, the same shall be removed for hearing and determination to the circuit court of the county. [Acts 1875, ch. 39, § 16, p. 55.]

Cross References. Change of judge, Circuit courts, transfer of cases from superior courts, IC 33-5-4-3.
venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-5-41-13. Change of venue. — Whenever an affidavit for a change of venue is filed in said court for any of the causes embraced in IC 34-35-1-1(1), IC 34-35-1-1(2), IC 34-35-1-1(6), or IC 34-35-1-1(7), some judge of a circuit or superior court shall be called to hear and determine the same as provided by law for changes of venue in causes pending in the circuit court. And if the causes alleged in the affidavit and embraced in IC 34-35-1-1(3), IC 34-35-1-1(4), and IC 34-35-1-1(5), then the change shall be granted, and the cause directed to the circuit court of some other county, as provided in cases of changes of venue from the circuit court, and the court to which the case is sent, shall have jurisdiction to hear and determine the cause, and render judgment therein. [Acts 1875, ch. 39, § 17, p. 55; 1981, P.L. 272, § 78; P.L.1-1998, § 177.]

Cross References. Change from county, Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.
venue, procedure, costs, IC 34-35-1-2.

33-5-41-14. Record books. — The clerk shall, under the direction of the judge, provide for said court, order-books, judgment dockets, execution dockets, fee-books, and such other books as may be necessary, and all the books and papers, and proceedings of said court, shall be kept distinct and separate from those of other courts. [Acts 1875, ch. 39, § 18, p. 55.]

33-5-41-15, 33-5-41-16. [Repealed.]

Compiler's Notes. These sections, concerning docket fees and fees of jurors and witnesses, were repealed by P.L.171-1984, § 80. For present law on general court costs, see IC 33-19-3-2; for present law on fees of jurors and witnesses, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-41-17. Appeals. — In all cases, where, under existing or future laws of this state, a person has the right of appeal from the circuit court, or a judge thereof in vacation, to the Supreme Court, an appeal may be had from said superior court, or the judge thereof, in vacation. [Acts 1875, ch. 39, § 22, p. 55.]

Cross References. Appeals to Supreme Court, jurisdiction, Rule AP. 4.

33-5-41-18. [Repealed.]

Compiler's Notes. This section which abolished the criminal court of Tippecanoe County, was repealed by Acts 1978, P.L. 2, § 3308.

CHAPTER 42

TIPPECANOE SUPERIOR COURT NO. 2

SECTION.

33-5-42-1. Court created — Judge — Term — Election.

33-5-42-2. Court of record — Seal.

33-5-42-3. Clerk, sheriff — Bailiff, court reporter — Salaries — Salary of judge.

33-5-42-4. Term of court.

33-5-42-5. Place of holding court — Appropriations — Provision by board of commissioners.

SECTION.

33-5-42-6. Jurisdiction.

33-5-42-7. Rules and regulations — Incidental powers of judge.

33-5-42-8 — 33-5-42-10. [Repealed.]

33-5-42-11. Transfer of cases between Superior Court and Superior Court No. 2 of Tippecanoe County.

33-5-42-1. Court created — Judge — Term — Election. — There is hereby created a superior court no. 2 in and for the county of Tippecanoe, Indiana, which court shall consist of one (1) judge, who shall hold his office for a term of six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified. The judge of said court shall be elected every six (6) years at the general election. [Acts 1969, ch. 77, § 1; 1976, P.L. 133, § 28.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1.

Judges, appointment by the governor, Ind. Const., Art. 5, § 18.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-42-2. Court of record — Seal. — The superior court No. 2, created by the provisions of this chapter, shall be known as “Superior Court No. 2 of Tippecanoe County” and the county of Tippecanoe shall constitute the judicial district of said court. The court shall be a court of record and shall have a seal containing the words “Superior Court No. 2, Tippecanoe County, Indiana.” [Acts 1969, ch. 77, § 2; 1981, P.L. 272, § 79.]

33-5-42-3. Clerk, sheriff — Bailiff, court reporter — Salaries — Salary of judge. — The clerk of the Tippecanoe Circuit Court shall be the clerk of Superior Court No. 2 of Tippecanoe County and the sheriff of Tippecanoe County shall be the sheriff of Superior Court No. 2 of Tippecanoe County. The clerk and sheriff shall attend said court and discharge all the duties pertaining to their respective office as they are now or may hereafter be required to do by law with reference to the Tippecanoe Circuit Court.

The judge of Superior Court No. 2 of Tippecanoe County shall appoint a bailiff and an official reporter for said court to serve as such during the pleasure of the court; and the judge shall fix their compensation within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters; and the compensation shall be paid monthly out of the treasury of Tippecanoe County, in the manner provided by law. The salary of the judge shall be the same as is provided by law for judges of superior courts. [Acts 1969, ch. 77, § 3, p. 163.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of judge, IC 33-13-12-2 — IC 33-13-12-9.
 Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

33-5-42-4. Term of court. — The term of court for Superior Court No. 2 of Tippecanoe County shall be the calendar year and the judge of said court shall have the same power to act in all matters and proceedings through the entire calendar year. [Acts 1969, ch. 77, § 4.]

Cross References. Terms of courts, IC 33-1-6-1 — IC 33-1-6-5.

33-5-42-5. Place of holding court — Appropriations — Provision by board of commissioners. — Superior Court No. 2 of Tippecanoe County shall hold its sessions in a place to be determined by the county council of Tippecanoe County, Indiana; and the board of county commissioners of Tippecanoe County shall provide and maintain in the courthouse or at such other convenient place as the board of commissioners or the judge of said court may provide at the county seat, a suitable and convenient courtroom for the holding of said court together with a suitable and convenient jury room and offices for the judge and the official court reporter. The board of county commissioners shall provide all necessary furniture and equipment for the rooms and offices of the court and all necessary dockets, books and records for the court. The county council shall make the necessary appropriations from the general fund of the county for the purpose of carrying out the provisions of this chapter. [Acts 1969, ch. 77, § 5; 1981, P.L. 272, § 80.]

33-5-42-6. Jurisdiction. — Superior Court No. 2 of Tippecanoe County shall have the same original and appellate jurisdiction now possessed by the Tippecanoe Circuit Court in civil and criminal cases, but not in matters of probate or juvenile jurisdiction. [Acts 1969, ch. 77, § 6.]

33-5-42-7. Rules and regulations — Incidental powers of judge. — The judge of Superior Court No. 2 of Tippecanoe County shall have full power and authority to make and adopt rules and regulations for conducting the business of Superior Court No. 2 of Tippecanoe County, not repugnant to the laws of the state of Indiana or the rules of the Supreme Court of the state of Indiana. The judge shall have all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt, and the power to enforce his orders. The judge of said court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court; and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1969, ch. 77, § 7.]

33-5-42-8 — 33-5-42-10. [Repealed.]

Compiler's Notes. These sections, pertaining to the qualifications and duties of jury commissioners, selection of petit jurors, and transfer of cases to Tippecanoe Superior

Court No. 2, were repealed by Acts 1977, P.L. 319, § 1 and Acts 1981, P.L. 272, § 146. For law on transfers from circuit court to superior court, see IC 33-5-4-2.

33-5-42-11. Transfer of cases between Superior Court and Superior Court No. 2 of Tippecanoe County. — The judge of the Superior Court No. 2 of Tippecanoe County may, with the consent of the judge of the Superior Court of Tippecanoe County, transfer any action, cause, or proceeding pending in Superior Court No. 2 of Tippecanoe County to the Superior Court of Tippecanoe County by transferring all original papers, instruments and orders filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with said Superior Court of Tippecanoe County, provided the same could have been originally filed and docketed in such Superior Court of Tippecanoe County, whenever in the opinion of both judges such transfer will expedite the disposition of such case, expedite the work of either court, or equalize the work load between the two (2) courts.

The judge of the Superior Court of Tippecanoe County may, with the consent of the judge of the Superior Court No. 2 of Tippecanoe County, transfer any action, cause, or proceeding pending in the Superior Court of Tippecanoe County to the Superior Court No. 2 of Tippecanoe County by transferring all original papers, instruments and orders filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with said Superior Court No. 2 of Tippecanoe County, provided the same could have been originally filed and docketed in such Superior Court No. 2 of Tippecanoe County, whenever in the opinion of both judges such transfer will expedite the disposition of such case, expedite the work of either court, or equalize the work load between the two courts. [IC 33-5-42-11, as added by Acts 1971, P.L. 431, § 1.]

CHAPTER 42.1

TIPPECANOE SUPERIOR COURT NO. 3

SECTION.

- 33-5-42.1-1. Court created — Seal.
- 33-5-42.1-2. Judge.
- 33-5-42.1-3. Jurisdiction.
- 33-5-42.1-4. Powers of judge.
- 33-5-42.1-5. Bailiff and court reporter.
- 33-5-42.1-6. Books.
- 33-5-42.1-7. Sessions — Rooms and facilities.

SECTION.

- 33-5-42.1-8. Transfer of actions or proceedings.
- 33-5-42.1-9. Authority of circuit and superior court judges to sit in either court.
- 33-5-42.1-10. Jury commissioners.
- 33-5-42.1-11. Rules.

33-5-42.1-1. Court created — Seal. — There is established a court of record to be known as the Tippecanoe superior court No. 3 (referred to as the court in this chapter). The court may have a seal containing the words "Tippecanoe Superior Court No. 3, Tippecanoe County, Indiana." Tippecanoe County comprises the judicial district of the court. [P.L.300-1985, § 1.]

33-5-42.1-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Tippecanoe County. The

judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Tippecanoe County;

(2) Be under seventy (70) years of age at the time of taking office; and

(3) Be admitted to the bar of Indiana.

[P.L.300-1985, § 1.]

33-5-42.1-3. Jurisdiction. — The court has the same jurisdiction as the Tippecanoe circuit court except that the court does not have probate jurisdiction. [P.L.300-1985, § 1.]

33-5-42.1-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Tippecanoe circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.300-1985, § 1.]

33-5-42.1-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Tippecanoe circuit court. Their salaries shall be paid monthly out of the treasury of Tippecanoe County as provided by law. [P.L.300-1985, § 1.]

33-5-42.1-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.300-1985, § 6.]

33-5-42.1-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Tippecanoe County courthouse in Lafayette, Indiana, or in such other places in the county as the Tippecanoe County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Tippecanoe County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.300-1985, § 1.]

33-5-42.1-8. Transfer of actions or proceedings. — The judge of the Tippecanoe circuit court or Tippecanoe superior court No. 1 or No. 2 may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court or superior court No. 1 or No. 2 to the court and the judge of the court may, with consent of the judge of the circuit or other superior court, transfer any action or proceeding from the court to the circuit or other superior court, if such action could have been originally filed in the receiving court. [P.L.300-1985, § 1.]

33-5-42.1-9. Authority of circuit and superior court judges to sit in either court. — The judge of the Tippecanoe circuit or other superior court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with the consent of the judge of the circuit [circuit] or other superior court, sit as a judge of the circuit [circuit] or other superior court in any matter as if an elected judge of the circuit or other superior court. [P.L.300-1985, § 1.]

Compiler's Notes. The bracketed word "circuit" was inserted twice by the compiler to correct misspellings.

33-5-42.1-10. Jury commissioners. — The jury commissioners appointed by the judge of the Tippecanoe circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Tippecanoe circuit court. The grand jury selected for the Tippecanoe circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.300-1985, § 1.]

33-5-42.1-11. Rules. — The judge of the court may adopt rules for conducting the business of the court, consistent with the laws and court rules of Indiana. However, when adopting local rules to govern in all the courts of record in the county, the judges of the circuit and superior courts shall act in concert. In the event of disagreement, the decision of a majority of the judges controls. In the event of a tie, the decision joined by the circuit court judge controls. [P.L.300-1985, § 1.]

CHAPTER 43

VANDEBURGH SUPERIOR COURT

SECTION.

- 33-5-43-1. Court established — Judges — Term.
- 33-5-43-1.1. Magistrate.
- 33-5-43-2. Name of court.
- 33-5-43-3. Seal.
- 33-5-43-4. Jurisdiction.
- 33-5-43-5. Juvenile jurisdiction.
- 33-5-43-6. Court of record.
- 33-5-43-7. Rules and regulations — Incidental powers of judge.
- 33-5-43-8. Orders, writs, appointments, commissions.
- 33-5-43-9. [Repealed.]
- 33-5-43-10. Where court held — Provision by board of commissioners.
- 33-5-43-11 — 33-5-43-14. [Repealed.]
- 33-5-43-15. Record books.
- 33-5-43-16. Order-books — Authentication — Signature.
- 33-5-43-17. Court reporters, bailiffs — Appointment — Salary.
- 33-5-43-18. Additional personnel.

SECTION.

- 33-5-43-19. Probation officers — Salary.
- 33-5-43-20. Laws applicable to court.
- 33-5-43-21. Jury commissioners — Selection of jurors.
- 33-5-43-22. [Repealed.]
- 33-5-43-23. Appeals to Supreme Court or Court of Appeals.
- 33-5-43-24. Process.
- 33-5-43-25. Presiding judge.
- 33-5-43-26. Action by entire court — Decision of majority.
- 33-5-43-27. Transfer of cases from circuit court.
- 33-5-43-28. Transfer of cases to circuit court.
- 33-5-43-29. Authority of circuit judge to sit in superior court.
- 33-5-43-30 — 33-5-43-32. [Repealed.]
- 33-5-43-33. Budget of court.
- 33-5-43-34. [Repealed.]
- 33-5-43-35. Standard small claims and misdemeanor division.

33-5-43-1. Court established — Judges — Term. — There shall be and is hereby established a superior court in Vanderburgh County, Indiana, which court shall consist of seven (7) judges who shall hold their office for six (6) years and until their successors shall have been elected and qualified. In addition to said seven (7) judges, the judge of the Vanderburgh Circuit Court may sit as a judge of said Vanderburgh Superior Court as hereinafter provided in this chapter. [Acts 1969, ch. 92, § 1; 1975, ch. 309, § 1.]

Cross References. Election of judges of Vanderburgh Circuit and Superior Courts, IC 33-5-43.2-1. Judges, practice of law as qualification, IC 33-13-9-1.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-43-1.1. Magistrate. — (a) The judges of the Vanderburgh superior court may jointly appoint not more than two (2) full-time magistrates under IC 33-4-7.

(b) A magistrate continues in office until jointly removed by the judges. [P.L.133-1992, § 39; P.L.18-1995, § 100.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that this section take effect July 1, 1993.

33-5-43-2. Name of court. — The court shall be named and styled Vanderburgh Superior Court. [Acts 1969, ch. 92, § 2.]

33-5-43-3. Seal. — The court shall have a seal consisting of a circular disc containing the words “Vanderburgh Superior Court,” “Indiana,” “Seal” and such design as the court may determine, an impression of which shall be spread of record upon the order-book of the court. [Acts 1969, ch. 92, § 3.]

33-5-43-4. Jurisdiction. — The court has original, appellate, concurrent and coextensive jurisdiction with the circuit court in all civil cases and criminal cases and jurisdiction concurrent and coextensive with the circuit court in all cases of appeal from boards of county commissioners and city courts, and all other appellate jurisdiction now vested in or which may hereafter be vested by law in the circuit court. The court has original and exclusive jurisdiction in all matters pertaining to the probate and the settlement of decedents’ estates, trusts, and guardianships, the probate of wills, proceedings to resist probate of wills, and proceedings to contest wills, the appointment of guardians, assignees, executors, administrators, and trustees and the administration and settlement of estates of protected persons (as defined in IC 29-3-1-13) and deceased persons, and of trusts, assignments, adoptions, and surviving partnerships, and all other probate matters. [Acts 1969, ch. 92, § 4; P.L.33-1989, § 113.]

Cited: *Loeb v. Woll*, 492 N.E.2d 40 (Ind. App. 1986).

33-5-43-5. Juvenile jurisdiction. — The court has exclusive juvenile jurisdiction in Vanderburgh County. [Acts 1969, ch. 92, § 5; 1978, P.L. 136, § 48.]

NOTES TO DECISIONS

ANALYSIS

Bastardy cases.
Circuit court jurisdiction.

Bastardy Cases.

Children born out of wedlock cases are juvenile matters pursuant to former IC 31-4-1-10 and within the jurisdiction of the juvenile division of the superior court. *Johnston v. Phelps*, 154 Ind. App. 9, 288 N.E.2d 782, 33 Ind. Dec. 408 (1972).

the supreme court's decision in *State v. Cargile*, 546 N.E.2d 301 (Ind. 1989), when it amended the former Uniform Reciprocal Enforcement of Support Act (URESA) to provide circuit courts with concurrent original jurisdiction in paternity proceedings under URESA, and under former IC 31-6-2-1.5 a circuit court had subject matter jurisdiction to determine paternity in URESA proceedings. *Egan v. Bass*, 644 N.E.2d 1272 (Ind. App. 1994).

Circuit Court Jurisdiction.

The general assembly was responding to

33-5-43-6. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [Acts 1969, ch. 92, § 6.]

33-5-43-7. Rules and regulations — Incidental powers of judge. — The judges of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and the rules of the Supreme Court of Indiana and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of the records and proceedings in the court. [Acts 1969, ch. 92, § 7.]

33-5-43-8. Orders, writs, appointments, commissions. — The judges of the court shall have the same powers to grant restraining orders, injunctions and writs of ne exeat, to issue writs of habeas corpus, to appoint receivers, masters, commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as it now or may hereafter be conferred on circuit courts or the judges thereof, and to appoint such officers necessary to facilitate the business thereof. [Acts 1969, ch. 92, § 8.]

33-5-43-9. [Repealed.]

Compiler's Notes. This section, concerning the powers and duties of probate commis-

sioners and juvenile referees, was repealed by Acts 1975, P. L. 309, § 8.

33-5-43-10. Where court held — Provision by board of commissioners. — The Vanderburgh Superior Court shall hold its sessions in the Vanderburgh County courthouse in the city of Evansville, state of Indiana, or its replacement. The board of county commissioners of Vanderburgh County shall provide and maintain in the courthouse suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, secretaries and official court reporters, and such other facilities as may be necessary. The board of county commissioners shall also provide all the necessary furniture and equipment for the rooms and offices of the court. [Acts 1969, ch. 92, § 10.]

33-5-43-11 — 33-5-43-14. [Repealed.]

Compiler's Notes. These sections, concerning salary of judges, clerk and sheriff and their duties and fees, were repealed by P.L.171-1984, § 80.

33-5-43-15. Record books. — The clerk, under the direction of the court, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for the court, and all books, papers and proceedings of the court shall be kept distinct and separate from those of other records. [Acts 1969, ch. 92, § 15.]

33-5-43-16. Order-books — Authentication — Signature. — The court shall maintain such order-books, or books as the court may determine necessary for the entire court, which order-book or books may be signed on behalf of the court by any of the sitting judges of said court and such signature shall be due authentication of the actions of each of the judges in the court. [Acts 1969, ch. 92, § 16.]

33-5-43-17. Court reporters, bailiffs — Appointment — Salary. — Each judge of the court shall appoint a court reporter, a bailiff and a riding bailiff for the court whose salary shall be fixed by the court and paid as now provided by law, and who shall serve at the pleasure of the judge making such appointment. [Acts 1969, ch. 92, § 17.]

Cross References. Salary of bailiff, IC 33-13-4-1. Salary of court reporter, IC 33-15-26-1 — IC 33-15-26-9.

33-5-43-18. Additional personnel. — The court shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of the duties of the court, whose salaries shall be fixed by the court and who shall serve at the pleasure of the court. [Acts 1969, ch. 92, § 18.]

33-5-43-19. Probation officers — Salary. — The court shall appoint such probation officers as are required who shall perform the same duties and receive the same compensation as is now, or may hereafter be, by law provided. [Acts 1969, ch. 92, § 19.]

33-5-43-20. Laws applicable to court. — All laws of the state of Indiana and all rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [Acts 1969, ch. 92, § 20.]

Cross References. Change of venue from county, procedure, costs, IC 34-35-1-2.

Change of venue, judge, grounds for, IC 34-35-1-1, Rule TR. 76.

Commencements of actions and the issuance of service of process, Rules TR. 3, 4-4.17.

Judges pro tempore, IC 34-35-1-4.

Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Selection, qualification and summoning of jurors for circuit court, IC 33-4-5-1 — IC 33-4-5-9.

33-5-43-21. Jury commissioners — Selection of jurors. — (a) The clerk of the Vanderburgh circuit court and the jury commissioners appointed by the Vanderburgh circuit court shall serve as jury commissioners for this court. The issuing and servicing of process shall be governed by the procedure specified in IC 33-4-5-2 for the circuit court. The selection of jurors may be made either:

(1) As specified for the circuit court in IC 33-4-5-2; or

(2) From a list of persons in the county who are at least eighteen (18) years of age and who hold a valid license issued by the bureau of motor vehicles under IC 9-24.

(b) The jurors need not serve in any particular order in which they are drawn by the jury commissioners.

(c) Any judge of the court may order the selection and summoning of other jurors for the court whenever necessary. The jurors summoned under this subsection shall serve the entire court and before any judge of the court where their service may be required.

(d) The contractor operating a license branch under IC 9-16 for Vanderburgh County shall, not later than January 1 of each year, provide to the jury commissioners of the Vanderburgh superior courts a list of all persons at least eighteen (18) years of age who hold a valid license issued by the bureau of motor vehicles. [Acts 1969, ch. 92, § 21; P.L.237-1993, § 2.]

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Selection, qualification and summoning of jurors for circuit court, IC 33-4-5-1 — IC 33-4-5-9.

Cited: Grzesiowski v. State, 168 Ind. App. 318, 51 Ind. Dec. 488, 343 N.E.2d 305 (1976); Robinson v. State, 446 N.E.2d 1287 (Ind. 1983).

NOTES TO DECISIONS

Service in Order Drawn.

It was not error to overrule challenge of jury panel on grounds that they were not called in the same order as they were drawn for service under former IC 33-15-22-1, as this

section exempts Vanderburgh Circuit Court from that requirement. Lockridge v. State, 172 Ind. App. 141, 359 N.E.2d 589, 56 Ind. Dec. 282 (1977).

33-5-43-22. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present provisions, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-43-23. Appeals to Supreme Court or Court of Appeals. — Any party may appeal to the supreme court or the court of appeals from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law and rules governing appeals to the court of appeals and the supreme court. [Acts 1969, ch. 92, § 23; P.L.3-1989, § 198.]

33-5-43-24. Process. — The process of the court shall have the seal affixed and be attested, directed, served and returned, and be in form as is, or may be, provided for process issuing from the circuit court. [Acts 1969, ch. 92, § 24.]

Cross References. Commencement of actions and the issuance and service of process, Rule TR. 3, 4-4.17.

33-5-43-25. Presiding judge. — The court, by rules duly adopted by the court, shall designate one of the judges as presiding judge and fix the time he shall preside, and said judge shall be responsible for the operation and conduct of the court and to seeing that the court shall efficiently and judicially operate. [Acts 1969, ch. 92, § 25.]

33-5-43-26. Action by entire court — Decision of majority. — Whenever any action of the entire court is required, then the sitting judges of the court will act in concert. In the event of disagreement, then the decision of the majority of the sitting judges shall control. [Acts 1969, ch. 92, § 26.]

33-5-43-27. Transfer of cases from circuit court. — The judge of the circuit court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court. [Acts 1969, ch. 92, § 27.]

Cross References. Circuit courts, transfer of cases and causes to superior court, IC 33-5-4-2. **Cited:** Armstead v. State, 549 N.E.2d 400 (Ind. App. 1990).

33-5-43-28. Transfer of cases to circuit court. — Any judge of this court may, with the consent of the judge of the circuit court transfer any action, cause or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be

redocketed and disposed of as if originally filed with the circuit court. [Acts 1969, ch. 92, § 28.]

Cross References. Circuit courts, transfer of cases from superior court, IC 33-5-4-3.

33-5-43-29. Authority of circuit judge to sit in superior court. — The judge of the Vanderburgh Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this court with all the rights and powers as if he were a duly elected judge of this court. [Acts 1969, ch. 92, § 29.]

33-5-43-30 — 33-5-43-32. [Repealed.]

Compiler's Notes. These sections, regarding termination of existing superior and probate courts, former superior and probate

courts of Vanderburgh County, and commissioning of judges, were repealed by Acts 1972, P.L. 209, § 4 and Acts 1978, P.L. 2, § 3308.

33-5-43-33. Budget of court. — The court shall submit its budget estimates annually to the auditor of the county for presentment and approval by the county council, as provided in IC 36-2-5. [Acts 1969, ch. 92, § 33; 1981, P.L. 272, § 81.]

33-5-43-34. [Repealed.]

Compiler's Notes. This section, which declared an emergency and provided effective

dates for various statutes, was repealed by Acts 1978, P.L. 2, § 3308.

33-5-43-35. Standard small claims and misdemeanor division. — The Vanderburgh Superior Court has a standard small claims and misdemeanor division. [P.L.167-1984, § 61.]

Valparaiso University Law Review. Private Judging: An Effective and Efficient Alter-

native to the Traditional Court System, 21 Val. U.L. Rev. 681 (1987).

CHAPTER 43.1

VANDERBURGH SUPERIOR COURT — SMALL CLAIMS DIVISION

33-5-43.1-1 — 33-5-43.1-12. [Repealed.]

Compiler's Notes. This chapter, concerning small claims division of Vanderburgh Superior Court, was repealed by Acts 1977, P.L. 320, § 1, P.L.167-1984, § 92 and P.L.171-

1984, § 80. For provision establishing standard small claims and misdemeanor division, see IC 33-5-43-35. For present law on general court costs, see IC 33-19-3.

CHAPTER 43.2

VANDERBURGH CIRCUIT AND SUPERIOR COURTS — ELECTION OF JUDGES

SECTION.

33-5-43.2-1. Nonpartisan elections.

33-5-43.2-2. [Repealed.]

33-5-43.2-1. Nonpartisan elections. — (a) The judge of the Vanderburgh circuit court and each of the seven (7) judges of the Vanderburgh superior court shall be elected in nonpartisan elections every six (6) years.

(b) During the period under IC 3-8-2-4 in which a declaration of candidacy may be filed for a primary election, any person desiring to become a candidate for any one of the eight (8) judgeships affected by this chapter shall file with the election division a declaration of candidacy adapted from the form prescribed under IC 3-8-2, signed by the candidate and designating on the declaration which judgeship the candidate seeks. Any petition without such designation shall be rejected by the election division (or by the Indiana election commission under IC 3-8-1-2). To be eligible for election, a candidate must be:

- (1) domiciled in the county of Vanderburgh;
- (2) a citizen of the United States; and
- (3) admitted to the practice of law in this state.

(c) All candidates for each respective judgeship shall be listed on the general election ballot in the form prescribed by IC 3-11-2, without party designation. The candidate receiving the highest number of votes for each judgeship shall be elected to that office.

(d) IC 3, where not inconsistent with the provisions of this chapter, applies to elections under this chapter. [IC 33-5-43.2-1, as added by Acts 1975, P.L. 309, § 6; 1976, P.L. 133, § 29; 1978, P.L. 139, § 3; 1980, P.L. 190, § 1; P.L.5-1986, § 20; P.L.3-1987, § 536; P.L.7-1990, § 55; P.L.3-1997, § 447.]

NOTES TO DECISIONS

Constitutionality.

The method of selecting judges for the superior courts exercising small claims and misdemeanor jurisdiction as set forth in this

section is a valid method. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-5-43.2-2. [Repealed.]

Compiler's Notes. This section, concerning the filling of vacancies, was repealed by

Acts 1978, P.L. 139, § 4, effective January 1, 1981.

CHAPTER 43.5

VANDERBURGH SUPERIOR COURT — ADDITIONAL PROVISIONS

33-5-43.5-1 — 33-5-43.5-46. [Repealed.]

Compiler's Notes. This chapter, containing additional provisions concerning

Vanderburgh Superior Court, was repealed by Acts 1978, P.L. 139, § 4.

CHAPTER 44

VIGO SUPERIOR COURT

33-5-44-1 — 33-5-44-18. [Repealed.]

Compiler's Notes. This chapter, concerning the Vigo Superior Court, was repealed by Acts 1975, P.L. 310, § 2. For present law, see IC 33-5-44.1-1 — IC 33-5-44.1-27.

CHAPTER 44.1

VIGO SUPERIOR COURT

SECTION.

33-5-44.1-1. Creation — Number and terms of judges.

33-5-44.1-2. Name.

33-5-44.1-3. Seal of.

33-5-44.1-4. Jurisdiction.

33-5-44.1-5. Court of record.

33-5-44.1-6. Authority of court and judge.

33-5-44.1-7. Conduct of business of court.

33-5-44.1-8. Appointment of personnel — Salaries.

33-5-44.1-9. Location of sessions — Rooms and facilities provided.

33-5-44.1-10 — 33-5-44.1-12. [Repealed.]

33-5-44.1-13. Fees.

33-5-44.1-14. Order-books and dockets required.

33-5-44.1-15. Maintaining and authenticating order books and dockets.

33-5-44.1-16. Appointment of bailiff and secretary.

SECTION.

33-5-44.1-17. Appointment of additional personnel.

33-5-44.1-18. Probation officers — Appointment — Duties — Salary.

33-5-44.1-19. Process — Issuing and serving.

33-5-44.1-20. Jury commissioners — Selection of jurors.

33-5-44.1-21. [Repealed.]

33-5-44.1-22. Appeals.

33-5-44.1-23. Form of process.

33-5-44.1-24. Presiding judge — Designation — Duties.

33-5-44.1-25. Judges sitting en banc.

33-5-44.1-26. Circuit court judge authorized to sit as judge.

33-5-44.1-27. Continuation of judges in office — Election and term of new judges.

33-5-44.1-1. Creation — Number and terms of judges. — There is hereby established a superior court in Vigo County, Indiana, which court shall consist of two (2) judges who shall hold their office for six (6) years if they behave well and until their successors have been elected and qualified. In addition to the two (2) judges, the judge of the Vigo Circuit Court may sit as a judge of said Vigo Superior Court as hereinafter provided in this chapter. [IC 33-5-44.1-1, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-2. Name. — The court shall be named and styled Vigo Superior Court. [IC 33-5-44.1-2, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-3. Seal of. — The court shall have a seal consisting of a circular disc containing the words "Vigo Superior Court of Indiana," and such design as the court may determine, an impression of which shall be spread of record upon the order-book of the court. [IC 33-5-44.1-3, as added by Acts 1975, P. L. 310, § 1.]

33-5-44.1-4. Jurisdiction. — The court has the same jurisdiction as the Vigo Circuit Court. [IC 33-5-44.1-4, as added by Acts 1975, P.L. 310, § 1; 1978, P.L. 136, § 49.]

33-5-44.1-5. Court of record. — The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-44.1-5, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-6. Authority of court and judge. — The judges of the court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state and the rules of the Supreme Court of Indiana and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges shall have the full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all records and proceedings in the court. [IC 33-5-44.1-6, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-7. Conduct of business of court. — The judges of the court shall have the same powers to grant restraining orders, injunctions, to issue writs of habeas corpus, to appoint receivers, master [masters], commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as it now or may hereafter be conferred on circuit courts or the circuit court judges and to appoint such officers necessary to facilitate the business of the court. [IC 33-5-44.1-7, as added by Acts 1975, P.L. 310, § 1.]

Compiler's Notes. The bracketed word "masters" was inserted by the compiler.

33-5-44.1-8. Appointment of personnel — Salaries. — The court may appoint such number of commissioners, probate commissioners, referees, juvenile referees, bailiffs, court reporters, probation officers, and such other personnel, including but not limited to an administrative officer, as shall in the opinion of the court be necessary to facilitate and transact the business of the court. The salaries of the personnel shall be fixed and paid as provided by law. However, if the salaries of any of the personnel are not provided by law, the amount and time of payment of such salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor upon the order of the court, and be entered on record. The officers and persons so appointed shall perform such duties as are prescribed by the court. Any such commissioners, probate commissioners, referees, juvenile referees, probation officers, and other personnel appointed by the court shall serve at the pleasure of the court.

Any probate commissioner so appointed by the court may be vested by said court with all suitable powers for the handling and management of the probate and guardianship matters of the court, including the fixing of all bonds, the auditing of accounts of estates and guardianships and trusts, acceptance of reports, accounts and settlements filed in said court, the appointment of personal representatives, guardians and trustees, the probating of wills, the taking and hearing of evidence on or concerning such matters, or any other probate, guardianship or trust matters in litigation before such court, the enforcement of court rules and regulations, and making of reports to the court including the taking and hearing of evidence together with such commissioner's findings and conclusions regarding the

same, all of such matters, nevertheless, to be under the final jurisdiction and decision of the judges of said court.

Any juvenile referee appointed by the court may be vested by said court with all suitable powers for the handling and management of the juvenile matters of the court, including the fixing of bonds, the taking and hearing of evidence on or concerning any juvenile matters in litigation before the court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, all of such matters, nevertheless, to be under final jurisdiction and decision of the judges of said court.

For any and all the foregoing purposes, any probate commissioner and juvenile referee shall have the power to summon witnesses to testify before the said commissioner and juvenile referee, to administer oaths and take acknowledgments in connection with and in furtherance of said duties and powers. [IC 33-5-44.1-8, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-9. Location of sessions — Rooms and facilities provided.

— The Vigo Superior Court shall hold its sessions in the Vigo County courthouse, or its replacement, in the city of Terre Haute, state of Indiana. The board of county commissioners of Vigo County shall provide and maintain in the courthouse suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, secretaries and official court reporters, and such other facilities as may be necessary. The board of county commissioners shall also provide all the necessary furniture and equipment for the rooms and offices of the court. [IC 33-5-44.1-9, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-10 — 33-5-44.1-12. [Repealed.]

Compiler's Notes. These sections, concerning salary of judge, clerk and sheriff of court and their duties and fees, were repealed by P.L.171-1984, § 80.

33-5-44.1-13. Fees. — The same fees shall be taxed in the superior court as are provided by law to be taxed in the circuit court, and said fees, when collected shall be disbursed in the same manner as like fees are disbursed in the circuit court. [IC 33-5-44.1-13, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-14. Order-books and dockets required. — The clerk, under the direction of the court, shall provide order-books, judgment dockets, execution dockets, fee-books, and such other books, papers and records as may be necessary for the court, and all books, papers and proceedings of the court shall be kept distinct and separate from those of other records. [IC 33-5-44.1-14, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-15. Maintaining and authenticating order books and dockets. — The court shall maintain such order book, or books as the court may determine necessary for the entire court, which order book or books may be signed on behalf of the court by any of the sitting judges of said court, and such signature shall be due authentication of the actions of each of the

judges in the court. [IC 33-5-44.1-15, as added by Acts 1975, P.L. 310, § 1; P.L.2-1995, § 123.]

33-5-44.1-16. Appointment of bailiff and secretary. — Each judge of the court shall appoint a court reporter, a bailiff and a secretary for the court whose salary shall be fixed by the court and paid as now provided by law, and who shall serve at the pleasure of the judge making such appointment. [IC 33-5-44.1-16, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-17. Appointment of additional personnel. — The court shall have the right to appoint such additional officers and personnel as may be necessary for the proper administration of the duties of the court, whose salaries shall be fixed by the court and who shall serve at the pleasure of the court. [IC 33-5-44.1-17, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-18. Probation officers — Appointment — Duties — Salary. — The court shall appoint such probation officers as are required who shall perform the same duties and receive the same compensation as is provided by law. [IC 33-5-44.1-18, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-19. Process — Issuing and serving. — All laws of the state of Indiana and all rules duly adopted by the Supreme Court of Indiana governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established. [IC 33-5-44.1-19, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-20. Jury commissioners — Selection of jurors. — The clerk of the Vigo Circuit Court and the jury commissioners appointed by the Vigo Circuit Court shall serve as jury commissioners for this court and shall be governed in all respects as provided for the selection of jurors and the issuing and servicing of process. However, said jurors need not serve in any particular order in which they are drawn by the jury commissioners. In addition, any judge of the court may order the selection and summoning of other jurors for the court whenever the same may be necessary and they shall serve the entire court and before any judge of the court where their service may be required. [IC 33-5-44.1-20, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-21. [Repealed.]

Compiler's Notes. This section, concerning fees of jurors and witnesses, was repealed by P.L.171-1984, § 80. For present law, see IC 33-19-1-4 — IC 33-19-1-6.

33-5-44.1-22. Appeals. — Any party may appeal to the Supreme Court or the Court of Appeals from any order or judgment of the court in any case

where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court. The appeal shall be governed by the law and rules governing appeals to the Supreme Court and the Court of Appeals. [IC 33-5-44.1-22, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-23. Form of process. — The process of the court shall have the seal affixed and be attested[,] directed, served and returned, and be in form as is, or may be, provided for process issuing from the circuit court. [IC 33-5-44.1-23, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-24. Presiding judge — Designation — Duties. — The court, by rules duly adopted by the court, may designate one of the judges as presiding judge and fix the time he shall preside, and said judge shall be responsible for the operation and conduct of the court and to seeing that the court shall efficiently and judicially operate. [IC 33-5-44.1-24, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-25. Judges sitting en banc. — The judges of the court may sit en banc and act in concert, and the judge of the circuit court may also sit en banc with the judges of this court. In the event of disagreement while sitting en banc, the decision of the majority of the judges shall control. However, in the absence of such majority, the decision of the presiding judge shall control. [IC 33-5-44.1-25, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-26. Circuit court judge authorized to sit as judge. — The judge of the Vigo Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a duly elected judge of this court. [IC 33-5-44.1-26, as added by Acts 1975, P.L. 310, § 1.]

33-5-44.1-27. Continuation of judges in office — Election and term of new judges. — The judges of the superior court of Vigo County and superior court of Vigo County, number two, who are holding office on May 1, 1975 shall continue in office as judges of the Vigo Superior Court.

The judges of the existing superior court of Vigo County holding office on May 1, 1975 shall continue in office as judge of the Vigo Superior Court as created by this chapter until December 31, 1980. The election of such judge shall be held at the general election in he [the] year 1980 and every six (6) years thereafter and his term of office shall begin on the first day of January next following his election.

The judge of the existing superior court of Vigo County, number two, holding office on May 1, 1975 shall continue in office as judge of the Vigo Superior Court as created by this chapter until December 31, 1978. The election of such judge shall be held at the general election in the year 1978 and every six (6) years thereafter and his term of office shall begin on the first day of January next following his election. [IC 33-5-44.1-27, as added by Acts 1975, P.L. 310, § 1.]

Compiler’s Notes. The bracketed word “the” in the second paragraph was inserted by the compiler.

CHAPTER 45

VIGO SUPERIOR COURT NO. 2

33-5-45-1 — 33-5-45-21. [Repealed.]

Compiler’s Notes. This chapter, concerning Vigo Superior Court No. 2, was repealed by Acts 1975, P.L. 310, § 2. For present law, see IC 33-5-44.1-1 — IC 33-5-44.1-27.

CHAPTER 45.1

WABASH SUPERIOR COURT

SECTION.	SECTION.
33-5-45.1-1. Wabash superior court established.	Funds for provision and maintenance.
33-5-45.1-2. Election of judge — Term — Eligibility.	33-5-45.1-8. Jury commissioners — Juries — Grand jury.
33-5-45.1-3. Jurisdiction of court.	33-5-45.1-9. Transfer of actions between courts.
33-5-45.1-4. Powers of judge.	33-5-45.1-10. Movement of judges between courts.
33-5-45.1-5. Appointment of bailiff and court reporter — Salaries.	33-5-45.1-11. Small claims and misdemeanor division.
33-5-45.1-6. Court record books.	
33-5-45.1-7. Courtrooms and facilities —	

33-5-45.1-1. Wabash superior court established. — (a) There is established a court of record to be known as the Wabash superior court (referred to as “the court” in this chapter).

(b) The court may have a seal containing the words “Wabash Superior Court, Wabash County, Indiana”.

(c) Wabash County comprises the judicial district of the court. [P.L.18-1995, § 101.]

33-5-45.1-2. Election of judge — Term — Eligibility. — (a) The court has one (1) judge who shall be elected at the general election every six (6) years in Wabash County. The judge’s term begins January 1 following the election and ends December 31 following the election of the judge’s successor.

(b) To be eligible to hold office as a judge of the court, a person must be:

- (1) A resident of Wabash County;
- (2) Less than seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.18-1995, § 101.]

33-5-45.1-3. Jurisdiction of court. — The court has the same jurisdiction as the Wabash circuit court. [P.L.18-1995, § 101.]

33-5-45.1-4. Powers of judge. — The judge of the court:

- (1) Has the same powers relating to the conduct of the business of the court as the judge of the Wabash circuit court; and
- (2) May administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.18-1995, § 101.]

33-5-45.1-5. Appointment of bailiff and court reporter — Salaries.

— (a) The judge of the court shall appoint a bailiff and an official court reporter for the court.

(b) The salaries of the bailiff and the official court reporter shall be:

- (1) Fixed in the same manner as the salaries of the bailiff and official court reporter for the Wabash circuit court; and
- (2) Paid monthly out of the treasury of Wabash County as provided by law. [P.L.18-1995, § 101.]

33-5-45.1-6. Court record books. — The clerk of the court, under the direction of the judge of the court, shall provide:

- (1) Order books;
- (2) Judgment dockets;
- (3) Execution dockets;
- (4) Fee books; and
- (5) Other books for the court;

that shall be kept separately from the books and papers of other courts. [P.L.18-1995, § 101.]

33-5-45.1-7. Courtrooms and facilities — Funds for provision and maintenance. — (a) The court shall hold sessions in:

- (1) The Wabash County courthouse in Wabash, Indiana; or
- (2) Other places in the county that the Wabash County executive provides.

(b) The Wabash County executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary.

(c) The Wabash County fiscal body shall appropriate sufficient funds for the provision and maintenance of the rooms and facilities. [P.L.18-1995, § 101.]

33-5-45.1-8. Jury commissioners — Juries — Grand jury. — (a) The jury commissioners appointed by the judge of the Wabash circuit court shall serve as the jury commissioners for the court.

(b) Juries for the court shall be selected in the same manner as juries for the Wabash circuit court.

(c) The grand jury selected for the Wabash circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.18-1995, § 101.]

33-5-45.1-9. Transfer of actions between courts. — (a) The judge of the Wabash circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court.

(b) The judge of the court may, with the consent of the judge of the Wabash circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.18-1995, § 101.]

33-5-45.1-10. Movement of judges between courts. — (a) The judge of the Wabash circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court.

(b) The judge of the court may, with the consent of the judge of the Wabash circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.18-1995, § 101.]

33-5-45.1-11. Small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.18-1995, § 101.]

CHAPTER 45.5

WARRICK SUPERIOR COURT

SECTION.

- 33-5-45.5-1. Courts established.
- 33-5-45.5-1.5. "Court" defined.
- 33-5-45.5-2. Seals.
- 33-5-45.5-3. Courts of record.
- 33-5-45.5-4. Jurisdiction.
- 33-5-45.5-5. Transfer of cases.
- 33-5-45.5-6. Authority of judges to sit in superior or circuit court.
- 33-5-45.5-7. Powers of judges.
- 33-5-45.5-8. Term of office of judge.
- 33-5-45.5-9. [Repealed.]
- 33-5-45.5-10. Discipline of judges.
- 33-5-45.5-11. Election.
- 33-5-45.5-12. Qualifications of judges.
- 33-5-45.5-13. Vacancy.
- 33-5-45.5-14. Standard small claims and misdemeanor divisions.

SECTION.

- 33-5-45.5-15. [Repealed.]
- 33-5-45.5-16. Practice and procedure.
- 33-5-45.5-17. Trial by jury.
- 33-5-45.5-18. Satisfaction of judgment in small claims division.
- 33-5-45.5-19. Small claims judgments as liens on real property.
- 33-5-45.5-20. Appeals in small claims cases.
- 33-5-45.5-21. [Repealed.]
- 33-5-45.5-22. Bailiff, court reporter, and other personnel.
- 33-5-45.5-23. Location of sessions — Rooms and facilities provided.
- 33-5-45.5-24, 33-5-45.5-25. [Repealed.]

33-5-45.5-1. Courts established. — (a) There is established a superior court No. 1 in Warrick County, Indiana. The court shall be named and styled "Warrick superior court No. 1".

(b) An additional court is established in Warrick County to be known as "Warrick superior court No. 2". [IC 33-5-45.5-1, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 40.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

Opinions of Attorney General. Although P.L. 311 of Acts 1975, providing for the establishment of a superior court in Warrick County, having no emergency clause, became effective upon promulgation on July 29, 1975, reading the act as a whole it was the legisla-

tive intent that the court created not come into existence until January 1, 1977, at which time a judge elected at the 1976 general election will assume the office of judge and until that time no vacancy could exist in such office. 1975, No. 18, p. 62.

Cited: In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 48 Ind. Dec. 754, 334 N.E.2d 659 (1975).

33-5-45.5-1.5. “Court” defined. — As used in this chapter, “court” refers to a superior court established under section 1 [IC 33-5-45.5-1] of this chapter. [P.L.133-1992, § 41.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that this section take effect July 1, 1993.

33-5-45.5-2. Seals. — Each court shall have a seal consisting of a circular disk containing the words “Warrick Superior Court No. 1” or “Warrick superior court No. 2” and of a design as each court may determine. [IC 33-5-45.5-2, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 42.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-3. Courts of record. — Each court shall be a court of record. Each court’s judgments, decrees, orders, and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court. [IC 33-5-45.5-3, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 43.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-4. Jurisdiction. — Each court has the same jurisdiction as the Warrick circuit court. [IC 33-5-45.5-4, as added by Acts 1975, P.L. 311, § 1; 1978, P.L. 136, § 50; P.L.133-1992, § 44.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-5. Transfer of cases. — (a) The judge of the circuit court may, with the consent of a court, transfer any action, cause, or proceeding filed and docketed in the circuit court to the court by transferring all original papers and instruments filed in the action, cause, or proceeding, without further transcript, to be redocketed and disposed of as if originally filed with the court.

(b) The judge of a court may, with the consent of the judge of the circuit court, transfer any action, cause, or proceeding filed and docketed in the court to the circuit court by transferring all original papers and instruments filed in the action, cause, or proceeding, without further transcript, to be redocketed and disposed of as if originally filed with the circuit court.

(c) The judge of a court may, with the consent of the judge of the other court, transfer any action, cause, or proceeding filed and docketed in the court to the other court to be redocketed and disposed of as if originally filed with the other court. [IC 33-5-45.5-5, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 45.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-6. Authority of judges to sit in superior or circuit court.

— (a) The judge of the Warrick circuit court shall be, at the judge's discretion and with a court's permission, authorized to sit and to act as a judge of the court in all matters before the court, without limitation and without any further order in the same manner and stead and with all the rights and powers as if the judge were a duly elected judge of the court.

(b) The judge of the Warrick superior court No. 1 or Warrick superior court No. 2 shall be, at the judge's discretion and with the circuit court's permission, authorized to sit and to act as a judge of the circuit court in all matters pending before the circuit court, without limitation and without any further order in the same manner and stead and with all the rights and powers as if the judge were the duly elected judge of the circuit court.

(c) The judge of a court may, with the consent of the judge of the other court, sit as a judge of the other court in any manner as if elected as the judge of the other court. [IC 33-5-45.5-6, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 46.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-7. Powers of judges. — (a) The Warrick superior court No. 1 or Warrick superior court No. 2 may make rules for conducting the business of the court not repugnant to the laws of Indiana.

(b) The Warrick superior court No. 1 or the Warrick superior court No. 2 may issue warrants and issue and direct all processes which are necessary in exercising the jurisdiction conferred under this chapter. The Warrick superior court No. 1 or Warrick superior court No. 2 may make all proper judgments, sentences, decrees, and orders, issue all process, and do all acts necessary or proper to carry the jurisdiction conferred under this chapter into effect in conformity with the laws of Indiana.

(c) The Warrick superior court No. 1 or the Warrick superior court No. 2 has the same power as the circuit court or a judge of the circuit court in relation to the attendance of witnesses, the punishment of contempts, and the enforcing of a court's orders. The Warrick superior court No. 1 or Warrick superior court No. 2 may administer oaths and give all necessary certificates for the authentication of the records and proceedings of the court. [IC 33-5-45.5-7, as added by Acts 1975, P.L. 311, § 1; 1977, P.L. 2, § 84; P.L.133-1992, § 47.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-8. Term of office of judge. — There shall be one (1) judge of the Warrick superior court No. 1 and one (1) judge of the Warrick superior court No. 2 who shall hold office for six (6) years, beginning on the first day

of January after a judge's election, and until the judge's successor is elected and qualified. [IC 33-5-45.5-8, as added by Acts 1975, P.L. 311, § 1; Acts 1976, P.L. 133, § 30; P.L.133-1992, § 48.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-9. [Repealed.]

Compiler's Notes. This section, concerning salary of judge, was repealed by P.L.171-1984, § 80.

33-5-45.5-10. Discipline of judges. — The judge of the Warrick superior court No. 1 and the Warrick superior court No. 2 shall be subject to all disciplinary rules promulgated by the Indiana supreme court. [IC 33-5-45.5-10, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 49.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-11. Election. — The voters of Warrick County shall elect every six (6) years a judge for the Warrick superior court No. 1 and a judge for the Warrick superior court No. 2 at the general election. [IC 33-5-45.5-11, as added by Acts 1975, P.L. 311, § 1; Acts 1976, P.L. 133, § 31; P.L.133-1992, § 50.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-12. Qualifications of judges. — To be eligible to hold office as a superior court judge, a person shall:

- (a) Be a resident of the county;
- (b) Not have attained seventy (70) years of age at the time of taking office; and
- (c) Be admitted to the practice of law in the state of Indiana.

[IC 33-5-45.5-12, as added by Acts 1975, P.L. 311, § 1.]

33-5-45.5-13. Vacancy. — Any vacancy occurring [occurring] in the office of the judge of the court shall be filled by appointment by the governor in the same manner as are vacancies in the office of the judge of the circuit court. [IC 33-5-45.5-13, as added by Acts 1975, P.L. 311, § 1.]

Compiler's Notes. The bracketed word "occurring" was inserted by the compiler to correct a misspelling.

33-5-45.5-14. Standard small claims and misdemeanor divisions. — Warrick superior court No. 1 has a standard small claims and misdemeanor division. Warrick superior court No. 2 has a standard small claims

and misdemeanor division. [IC 33-5-45.5-14, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 51.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-15. [Repealed.]

Compiler's Notes. This section, concerning dockets, was amended in 1984 by P.L.171-1984, § 50 and repealed by P.L.167-1984, § 92.

33-5-45.5-16. Practice and procedure. — All laws and rules adopted by the Indiana Supreme Court now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court.

In cases on the civil small claims docket, there shall be the following exceptions to the aforesaid laws and rules:

(a) Defendant shall be deemed to have complied with the statute and rule requiring the filing of an answer upon entering his appearance personally or by attorney. Such appearance shall be deemed a general denial and shall preserve all defenses and compulsory counterclaims which may then be presented at the trial of the cause.

(b) If at the trial of the cause the court determines that the complaint is so vague and ambiguous that the defendant was unable to determine the nature of plaintiff's claim or that the plaintiff is surprised by a defense or compulsory counterclaim raised by the defendant which the plaintiff could not reasonably have anticipated, the court shall grant a continuance.

(c) The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except such provisions relating to privileged communications and offers of compromise. [IC 33-5-45.5-16, as added by Acts 1975, P.L. 311, § 1.]

33-5-45.5-17. Trial by jury. — When a trial by jury is demanded a judge of the court may call a jury from the list provided and used by the circuit court, although the filing of a small claim shall be deemed a waiver of trial by jury by the plaintiff. The defendant may, not later than ten (10) days after being served, make demand for a trial by jury by affidavit stating that there are questions of fact requiring a trial by jury, specifying them, and stating that such is intended in good faith. The court shall thereupon cause the claim to be transferred to the regular docket and the defendant shall pay the filing fee charged for filing civil actions in circuit court. Upon transfer such claim shall lose its status as a small claim and be subject to all ordinary

rules and procedure. [IC 33-5-45.5-17, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 52.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-18. Satisfaction of judgment in small claims division. — When the judgment or order in the small claims division of the court is against the defendant, he shall pay the same forthwith or at any time and upon such terms and conditions as the judge shall prescribe. If the judge orders that the judgment shall be paid in specified installments, he may stay the issuance of execution and other supplementary process during compliance with such order. The stay may be modified or vacated by the court. [IC 1971, 33-5-45.5-18, as added by Acts 1975, P.L. 311, § 1.]

33-5-45.5-19. Small claims judgments as liens on real property. — All judgments rendered in the small claims division of a court shall be properly recorded in the judgment docket book of the court. The judgments shall be liens on real estate in the same manner as judgments in a court of general jurisdiction become liens on real estate under IC 34-55-9. [IC 33-5-45.5-19, as added by Acts 1975, P.L. 311, § 1; 1981, P.L. 272, § 85; P.L.3-1990, § 113; P.L.133-1992, § 53; P.L.1-1998, § 178.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-20. Appeals in small claims cases. — An appeal of a judgment from a standard small claims and misdemeanor division of a court shall be taken in the same manner and under the same rules and statutes and with the same assessment of costs as cases appealed from the circuit courts of the state. The appeal in a small claims case must be commenced and perfected within thirty (30) days after the entry of judgment or the right to appeal is waived. [IC 33-5-45.5-20, as added by Acts 1975, P.L. 311, § 1; P.L.133-1992, § 54.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-21. [Repealed.]

Compiler's Notes. This section, concerning clerk and sheriff, was repealed by P.L.171-1984, § 80.

33-5-45.5-22. Bailiff, court reporter, and other personnel. — Each court shall appoint a bailiff, court reporter, and the additional personnel necessary to carry out the business of the court. The duties, salaries, and terms of the bailiff and recorder shall be regulated in the same manner as

provided for the circuit court. [IC 33-5-45.5-22, as added by Acts 1975, P.L. 311 § 1; P.L.133-1992, § 55.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-23. Location of sessions — Rooms and facilities provided. — Warrick superior court No.1 and Warrick superior court No. 2 shall hold sessions in the Warrick County courthouse in the city of Boonville, Indiana, or at any other place in the county of Warrick, Indiana, as the board of county commissioners may provide. The board of county commissioners of Warrick County shall provide and maintain a suitable and convenient courtroom for the holding of a court, together with suitable and convenient jury rooms and offices for the judges and official court reporters and other facilities as may be necessary. The board of county commissioners shall also provide all the necessary furniture and equipment for the rooms and offices of a court, and the county council shall appropriate sufficient funds for the rooms, facilities, furniture, and equipment. [IC 33-5-45.5-23, as added by Acts 1975, P.L. 311 § 1; P.L.133-1992, § 56.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

33-5-45.5-24. [Repealed.]

Compiler’s Notes. This section, concerning costs, was repealed by P.L.171-1984, § 80. For present provisions see IC 33-19-5.

33-5-45.5-25. [Repealed.]

Compiler’s Notes. This section, relating to standard small claims and misdemeanor division, was repealed by P.L.133-1992, § 63, effective July 1, 1993.

CHAPTER 45.8

WASHINGTON SUPERIOR COURT

SECTION.	SECTION.
33-5-45.8-1. Court established — Seal.	33-5-45.8-9. Transfer of actions or proceedings.
33-5-45.8-2. Judge.	33-5-45.8-10. Authority of circuit and superior court judges to sit in either court.
33-5-45.8-3. Jurisdiction.	33-5-45.8-11. Standard small claims and misdemeanor division.
33-5-45.8-4. Powers of judge.	
33-5-45.8-5. Bailiff and court reporter.	
33-5-45.8-6. Books.	
33-5-45.8-7. Sessions — Rooms and facilities.	
33-5-45.8-8. Jury commissioners.	

33-5-45.8-1. Court established — Seal. — There is established a court of record to be known as the Washington superior court (referred to as the court in this chapter). The court may have a seal containing the words “Washington Superior Court, Washington County, Indiana.” Washington County comprises the judicial district of the court. [P.L.186-1986, § 20.]

33-5-45.8-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Washington County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Washington County;

(2) Be under seventy (70) years of age at the time of taking office; and

(3) Be admitted to the practice of law in Indiana.

[P.L.186-1986, § 20.]

33-5-45.8-3. Jurisdiction. — The court has the same jurisdiction as the Washington circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.186-1986, § 20.]

33-5-45.8-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Washington circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.186-1986, § 20.]

33-5-45.8-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Washington circuit court. Their salaries shall be paid monthly out of the treasury of Washington County as provided by law. [P.L.186-1986, § 20.]

33-5-45.8-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.186-1986, § 20.]

33-5-45.8-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Washington County courthouse in Salem, Indiana, or in such other places in the county as the Washington County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Washington County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.186-1986, § 20.]

33-5-45.8-8. Jury commissioners. — The jury commissioners appointed by the judge of the Washington circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Washington circuit court. The grand jury selected for the Washington circuit court shall also serve as the grand jury for the court as may be necessary. [P.L.186-1986, § 20.]

33-5-45.8-9. Transfer of actions or proceedings. — The judge of the Washington circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.186-1986, § 20.]

33-5-45.8-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Washington circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.186-1986, § 20.]

33-5-45.8-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.186-1986, § 20.]

CHAPTER 46

WAYNE SUPERIOR COURT

SECTION.	SECTION.
33-5-46-1. Creation of court — Judge — Term — Election.	board of commissioners.
33-5-46-2. Name — Seal.	33-5-46-5. Jurisdiction.
33-5-46-3. Bailiff and court reporter,	33-5-46-6. Rules and regulations of court —
33-5-46-4. Where court held — Provision by	Powers of judge.

33-5-46-1. Creation of court — Judge — Term — Election. — There hereby is created and established a superior court in and for the county of Wayne, Indiana, which shall consist of one (1) judge, who shall hold his office for six (6) years, beginning on the first day of January after his election, and until his successor shall have been elected and qualified, if he shall so long behave well. Such judge shall be elected every six (6) years at the general election. [Acts 1951, ch. 3, § 1; 1976, P.L. 133, § 32.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1. Judges, appointment by the governor, Ind. Const., Art. 5, § 18.	Judges, commencement and expiration of term, IC 33-13-5-1.
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33-5-46-2. Name — Seal. — Said superior court shall be styled “Wayne Superior Court,” and the county of Wayne shall constitute the judicial district of said court. Said court shall be a court of record and general jurisdiction, and shall have a seal containing the words, “Wayne Superior Court of Wayne County, Indiana.” [Acts 1951, ch. 3, § 2, p. 4.]

33-5-46-3. Bailiff and court reporter. — The judge of said court shall appoint a bailiff and an official court reporter for said court, to serve as such during the pleasure of the court. The judge shall fix their per diem or salary

within the limits and in the manner as many [may] be provided by law concerning bailiffs and official court reporters. The same shall be paid monthly out of the treasury of Wayne County in the manner provided by law. [Acts 1951, ch. 3, § 3; P.L.171-1984, § 51.]

Compiler's Notes. The bracketed word "may" in the second sentence was inserted by the compiler to correct an apparent error.

Cross References. Salary of bailiffs, IC 33-13-4-1.

Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

Salary of judges, IC 33-13-12-2 — IC 33-13-12-9.

33-5-46-4. Where court held — Provision by board of commissioners. — Said court shall hold its sessions in the Wayne County courthouse, in the city of Richmond, Indiana, and the board of commissioners of the county of Wayne shall provide and maintain in the courthouse a suitable and convenient courtroom for the holding of said court, together with a suitable and convenient jury room, and offices for the presiding judge, and the official court reporter, and shall provide all necessary furniture and equipment for said rooms and offices, and all necessary dockets, books and records for said court. [Acts 1951, ch. 3, § 5.]

33-5-46-5. Jurisdiction. — The court has the same jurisdiction as the Wayne Circuit Court. [Acts 1951, ch. 3, § 6; 1978, P.L. 136, § 51.]

33-5-46-6. Rules and regulations of court — Powers of judge. — The judge of the Wayne Superior Court shall have full power and authority to make and adopt rules and regulations for conducting the business of the Wayne Superior Court not repugnant to the laws of the state of Indiana, or rules of the Supreme Court of the state of Indiana and shall have all the powers incident to a court of record in relation to the attendance of witnesses, punishment of contempt, and to enforce its orders. The judge of said court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgment of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court, and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1951, ch. 3, § 7.]

CHAPTER 47

WAYNE SUPERIOR COURT NO. 2

SECTION.

- 33-5-47-1. Creation of court — Judge — Term — Election.
- 33-5-47-2. Name — Seal.
- 33-5-47-3. Bailiff and court reporter.
- 33-5-47-4. Terms.
- 33-5-47-5. Where court held — County council — County commissioners — Appropriation.

SECTION.

- 33-5-47-6. Jurisdiction.
- 33-5-47-7. Rules and regulations — Incidental powers of judge.
- 33-5-47-8. Jury commissioners.
- 33-5-47-9. Jury commissioners and juries — Laws regulating.
- 33-5-47-10. [Repealed.]

33-5-47-1. Creation of court — Judge — Term — Election. — There is hereby created a superior court no. 2 in and for the county of Wayne, Indiana, which court shall consist of one (1) judge, who shall hold his office for a term of six (6) years, beginning on the first day of January after his election, and until his successor is elected and qualified. The judge of the court shall be elected every six (6) years at the general election. [Acts 1969, ch. 363, § 1; 1976, P.L. 133, § 33.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1. Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-5-47-2. Name — Seal. — The court created by the provisions of this chapter shall be known as the “Wayne Superior Court No. 2,” and the county of Wayne shall constitute the judicial district of the court. The court shall be a court of record and general jurisdiction, and shall have a seal containing the words “Wayne Superior Court No. 2, of Wayne County, Indiana.” [Acts 1969, ch. 363, § 2; 1981, P.L. 272, § 86.]

33-5-47-3. Bailiff and court reporter. — The judge of the Wayne Superior Court No. 2 shall appoint a bailiff and an official court reporter for the court, to serve as such during the pleasure of the court. The judge shall fix their compensation within the limits and in the manner as may be provided by law concerning bailiffs and official court reporters. The compensation shall be paid monthly out of the treasury of Wayne County in the manner provided by law. [Acts 1969, ch. 363, § 3; P.L. 171-1984, § 52.]

Cross References. Salary of bailiffs, IC 33-13-4-1. Salary of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

33-5-47-4. Terms. — The terms of the Wayne Superior Court No. 2 shall be held in such judicial district pursuant to IC 33-1-6. [Acts 1969, ch. 363, § 4; 1981, P.L. 272, § 87.]

33-5-47-5. Where court held — County council — County commissioners — Appropriation. — The Wayne Superior Court No. 2 shall hold its sessions in a place to be determined by the county council of Wayne County, Indiana; and the board of county commissioners of Wayne County shall provide and maintain in the courthouse a suitable and convenient courtroom for the holding of said court, together with a suitable and convenient jury room and offices for the judge and the official court reporter. The board of county commissioners shall provide all necessary furniture and equipment for the rooms and offices of the court, and all necessary dockets, books and records for the court. The county council shall make the necessary appropriations from the general fund of the county for the purpose of carrying out the provisions of this chapter. [Acts 1969, ch. 363, § 5; 1981, P.L. 272, § 88.]

33-5-47-6. Jurisdiction. — The Wayne Superior Court No. 2 has the same jurisdiction as the Wayne Circuit Court. [Acts 1969, ch. 363, § 6; 1978, P.L. 136, § 52.]

33-5-47-7. Rules and regulations — Incidental powers of judge. — The judge of the Wayne Superior Court No. 2 shall have full power and authority to make and adopt rules and regulations for conducting the business of the Wayne Superior Court No. 2, not repugnant to the laws of the state of Indiana or the rules of the Supreme Court of the state of Indiana. The judge shall have all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt, and the power to enforce his orders. The judge of said court shall have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and to give all necessary certificates for the authentication of records and proceedings of said court; and to make and execute certificates of qualification and moral character of persons petitioning to be commissioned as notaries public. [Acts 1969, ch. 363, § 7.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-5-47-8. Jury commissioners. — Jury commissioners for Wayne Superior Court No. 2 shall be selected in the same manner, to the same effect, and subject to the same limitations as those selected for the Wayne Superior Court No. 1. [Acts 1969, ch. 363, § 8.]

Cross References. Jury commissioners, jurors for the circuit court, IC 33-4-5-1 — IC 33-4-5-1 — IC 33-4-5-9.
Selection, qualification and summoning of

33-5-47-9. Jury commissioners and juries — Laws regulating. — All laws of the state of Indiana now in force or that may hereafter be enacted governing the powers, duties and procedure of jury commissioners in circuit courts of the state of Indiana, their failure to act, their contempt of court, a vacancy and the appointment of successor, their qualifications, their selection of petit jurors, their keeping a box [of names] of prospective jurors locked, the manner of drawing petit jurors' names therefrom, the selection of additional jurors, the selection of special venires and laws of the state of Indiana pertaining to special juries, struck jury with or without notice, the duties of the clerk of the court pertaining to selection of juries and other laws pertaining to the drawing and recording of names of prospective petit jurors, shall be applicable to and govern the jury commissioners duly appointed and the selection of petit jurors in the Wayne Superior Court No. 2. [Acts 1969, ch. 363, § 9.]

Compiler's Notes. The bracketed words "of names" were inserted by the compiler.

Cross References. Juries and jurors, commissioners to select, IC 33-4-5-1 — IC 33-4-5-3.

Jury fee, per diem and mileage, IC 33-19-1-4.

33-5-47-10. [Repealed.]

Compiler's Notes. This section, concerning transfer of cases to Wayne Superior Court No. 2, was repealed by Acts 1981, P.L. 272,

§ 146. For present law on transfers from circuit court to superior court, see IC 33-5-4-2.

CHAPTER 48

WAYNE SUPERIOR COURT NO. 3

SECTION.

- 33-5-48-1. Wayne Superior Court No. 3 — Establishment.
 33-5-48-2. Judge — Election — Term — Qualifications.
 33-5-48-3. Jurisdiction.
 33-5-48-4. Powers of judge.
 33-5-48-5 — 33-5-48-7. [Repealed.]
 33-5-48-8. Bailiff, court reporter, referee, commissioner, and other personnel.

SECTION.

- 33-5-48-9. Court books.
 33-5-48-10. Location of courtroom — Furnishings — Appropriations.
 33-5-48-11. Jury commissioners.
 33-5-48-12. [Repealed.]
 33-5-48-13. Reciprocal right of judges to sit on other court.
 33-5-48-14. Transfer of actions.
 33-5-48-15. Standard small claims and misdemeanor division.

33-5-48-1. Wayne Superior Court No. 3 — Establishment. — There is established a court of record having general jurisdiction to be known as the Wayne Superior Court No. 3 (referred to as “the court” in this chapter). The court may have a seal containing the words “Wayne Superior Court No. 3, Wayne County, Indiana”. Wayne County comprises the judicial district of the court. [IC 33-5-48-1, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-2. Judge — Election — Term — Qualifications. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Wayne County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of Wayne County;
- (2) Be under seventy (70) years of age at the time he takes office;
- (3) Be admitted to the bar of Indiana; and
- (4) Have practiced law at least five (5) years. [IC 33-5-48-2, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-3. Jurisdiction. — The court has the same jurisdiction as the Wayne Circuit Court and Wayne superior courts No. 1 and No. 2. [IC 33-5-48-3, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of business of the court as the judge of the Wayne Circuit Court and the judges of Wayne superior courts No. 1 and No. 2. The judge has all powers incident to a court of record in relation to the attendance of witnesses and punishment for contempt, and the power to enforce his orders. The judge has full authority to administer oaths, solemnize marriages, take and certify acknowledgements of deeds, and give all necessary certificates for the authentication of records and proceedings of his court. [IC 33-5-48-4, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-5 — 33-5-48-7. [Repealed.]

Compiler's Notes. These sections, concerning salary of judge, small claims and misdemeanor division, and taxation and dis-

tribution of costs, were repealed by P.L.167-1984, § 92 and P.L.171-1984, § 80.

33-5-48-8. Bailiff, court reporter, referee, commissioner, and other personnel. — The judge of the court may appoint a bailiff, official court reporter, referee, commissioner, and any other personnel as he considers necessary to facilitate and transact the business of the court. The judge of the court shall fix their compensation within the limits and in the manner as provided by law concerning these officers and employees. These personnel shall serve at the pleasure of the court and be paid monthly in the manner of payment for officers and employees of Wayne Circuit Court and Wayne superior courts No. 1 and No. 2. [IC 33-5-48-8, as added by Acts 1981, P.L. 275, § 26; P.L.171-1984, § 54.]

33-5-48-9. Court books. — The clerk, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [IC 33-5-48-9, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-10. Location of courtroom — Furnishings — Appropriations. — The court shall hold its sessions in a place to be determined and provided by the county council of Wayne County, Indiana. The board of county commissioners of Wayne County shall provide and maintain in the courthouse a suitable and convenient courtroom for holding the court, together with a suitable and convenient jury room and offices for the judge, official court reporter, and staff of the court. The board of county commissioners shall provide all necessary furniture and equipment for the rooms, offices, and employees of the court, and all necessary dockets, books, and records for the court. The county council shall make all necessary appropriations from the general fund of the county for the purpose of carrying out the provisions of this chapter. [IC 33-5-48-10, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-11. Jury commissioners. — Jury commissioners for the Wayne Circuit Court shall be jury commissioners for the court. [IC 33-5-48-11, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-12. [Repealed.]

Compiler's Notes. This section, concerning jury trial and number of jurors, was repealed by P.L.171-1984, § 80.

33-5-48-13. Reciprocal right of judges to sit on other court. — The judges of the Wayne Circuit Court and Wayne superior courts No. 1 and No. 2 may, with the consent of the judge of the court, sit as judge of the court in any matter in the small claims and minor offenses division of the court, as

if he were an elected judge of the court. [IC 33-5-48-13, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-14. Transfer of actions. — The judges of the Wayne Circuit Court and Wayne superior courts No. 1 and No. 2 may, with the consent of the judge of the court, transfer any action, cause, or proceeding filed and docketed in the Wayne Circuit Court, Wayne Superior Court No. 1, or Wayne Superior Court No. 2, to the court by transferring all original papers and instruments filed in such an action, cause, or proceeding. Such an action, cause, or proceeding shall be treated as if originally filed with the court. The judge of the court may, with the consent of the judge of the Wayne Circuit Court, Wayne Superior Court No. 1, or Wayne Superior Court No. 2, transfer any action, cause, or proceeding filed and docketed in the court, except a cause properly docketed in the small claims or minor offenses division of the court, to the Wayne Circuit Court, Wayne Superior Court No. 1, or Wayne Superior Court No. 2, by transferring all original papers and instruments filed in such an action, cause, or proceeding. Such an action, cause, or proceeding shall be treated as if originally filed with the transferee court. However, if any cause, action, or proceeding transferred under this section is later transferred on change of venue to a court of another county, or if any such a cause is appealed to the Court of Appeals or Supreme Court of Indiana, then the party taking the change of venue or appeal may have a transcript made of the proceedings in each court, certified by the clerk of that court. Such a transcript shall have the same force and effect, and shall give the court to which it is taken on change of venue or appeal the same jurisdiction, as though this transcript had been originally made when the cause was transferred to the transferee court. [IC 33-5-48-14, as added by Acts 1981, P.L. 275, § 26.]

33-5-48-15. Standard small claims and misdemeanor division. — The Wayne Superior Court No. 3 has a standard small claims and misdemeanor division. [P.L.167-1984, § 63.]

CHAPTER 48.5

WELLS SUPERIOR COURT

- SECTION.
- 33-5-48.5-1. Court created — Seal.
 - 33-5-48.5-2. Judge.
 - 33-5-48.5-3. Jurisdiction.
 - 33-5-48.5-4. Powers of judge.
 - 33-5-48.5-5. Bailiff and court reporter.
 - 33-5-48.5-6. Books.
 - 33-5-48.5-7. Sessions — Rooms and facilities.
 - 33-5-48.5-8. Jury commissioners.

- SECTION.
- 33-5-48.5-9. Transfer of actions or proceedings.
 - 33-5-48.5-10. Authority of circuit and superior court judges to sit in either court.
 - 33-5-48.5-11. Standard small claims and misdemeanor division.

33-5-48.5-1. Court created — Seal. — There is established a court of record to be known as the Wells superior court (referred to in this chapter as the court). The court may have a seal containing the words “Wells Superior

Court, Wells County, Indiana." Wells County comprises the judicial district of the court. [P.L.186-1986, § 21.]

33-5-48.5-2. Judge. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Wells County. The judge's term begins January 1 following the election and ends December 31 following the election of the judge's successor.

(b) To be eligible to hold office as judge of the court, a person must be:

- (1) A resident of Wells County;
- (2) Under seventy (70) years of age at the time of taking office; and
- (3) Admitted to the practice of law in Indiana.

[P.L.186-1986, § 21.]

33-5-48.5-3. Jurisdiction. — The court has the same jurisdiction as the Wells circuit court, except that only the circuit court has juvenile jurisdiction. [P.L.186-1986, § 21.]

33-5-48.5-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Wells circuit court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.186-1986, § 21.]

33-5-48.5-5. Bailiff and court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court. Their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Wells circuit court. Their salaries shall be paid monthly out of the treasury of Wells County as provided by law. [P.L.186-1986, § 21.]

33-5-48.5-6. Books. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.186-1986, § 21.]

33-5-48.5-7. Sessions — Rooms and facilities. — The court shall hold its sessions in the Wells County courthouse in Bluffton, Indiana, or in such other places in the county as the Wells County executive may provide. The county executive shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The Wells County fiscal body shall appropriate sufficient funds for the provision and maintenance of these rooms and facilities. [P.L.186-1986, § 21.]

33-5-48.5-8. Jury commissioners. — The jury commissioners appointed by the judge of the Wells circuit court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Wells circuit court. The grand jury selected for the Wells circuit

court shall also serve as the grand jury for the court as may be necessary. [P.L.186-1986, § 21.]

33-5-48.5-9. Transfer of actions or proceedings. — The judge of the Wells circuit court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.186-1986, § 21.]

33-5-48.5-10. Authority of circuit and superior court judges to sit in either court. — The judge of the Wells circuit court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if an elected judge of the circuit court. [P.L.186-1986, § 21.]

33-5-48.5-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.186-1986, § 21.]

CHAPTER 49

WHITE SUPERIOR COURT

SECTION.

- 33-5-49-1. Establishment — Seal.
- 33-5-49-2. Judges.
- 33-5-49-3. Jurisdiction.
- 33-5-49-4. Powers of judges.
- 33-5-49-5. Bailiff — Court reporter.
- 33-5-49-6. Clerk of court.
- 33-5-49-7. Sessions — Courtroom and other necessary facilities and services.

SECTION.

- 33-5-49-8. Selection of juries.
- 33-5-49-9. Transfer of cases between circuit court and superior court.
- 33-5-49-10. Reciprocal right of judges to sit on other court.
- 33-5-49-11. Standard small claims and misdemeanor division.

33-5-49-1. Establishment — Seal. — There is established a court of record to be known as the White Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “White Superior Court, White County, Indiana.” White County comprises the judicial district of the court. [P.L.169-1984, § 2.]

33-5-49-2. Judges. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in White County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

- (1) Be a resident of White County;
- (2) Be under seventy (70) years of age at the time he takes office; and
- (3) Be admitted to the bar of Indiana.

[P.L.169-1984, § 2.]

33-5-49-3. Jurisdiction. — The court has the same jurisdiction as the White Circuit Court. [P.L.169-1984, § 2.]

33-5-49-4. Powers of judges. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the White Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.169-1984, § 2.]

33-5-49-5. Bailiff — Court reporter. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the White Circuit Court. Their salaries shall be paid monthly out of the treasury of White County as provided by law. [P.L.169-1984, § 2.]

33-5-49-6. Clerk of court. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.169-1984, § 2.]

33-5-49-7. Sessions — Courtroom and other necessary facilities and services. — The court shall hold its sessions in the White County courthouse in Monticello, Indiana, or in such other places in the county as the board of county commissioners of White County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of White County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [P.L.169-1984, § 2.]

33-5-49-8. Selection of juries. — The jury commissioners appointed by the judge of the White Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the White Circuit Court. The grand jury selected for the White Circuit Court shall also serve as the grand jury for the court as may be necessary. [P.L.169-1984, § 2.]

33-5-49-9. Transfer of cases between circuit court and superior court. — The judge of the White Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.169-1984, § 2.]

33-5-49-10. Reciprocal right of judges to sit on other court. — The judge of the White Circuit Court may, with the consent of the judge of the

court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [P.L.169-1984, § 2.]

33-5-49-11. Standard small claims and misdemeanor division. — The court has a standard small claims and misdemeanor division. [P.L.169-1984, § 2.]

CHAPTER 50

WHITLEY SUPERIOR COURT

SECTION.

33-5-50-1. Court established — Seal — Judicial district.

33-5-50-2. Judge — Election — Term — Eligibility.

33-5-50-3. Jurisdiction.

33-5-50-4. Powers of judge.

33-5-50-5. Bailiff — Court reporter — Salaries.

33-5-50-6. Clerk of court — Duties.

33-5-50-7. Courtroom — Facilities.

SECTION.

33-5-50-8. Juries — Selection — Jury commissioners — Grand jury.

33-5-50-9. Transfer of actions.

33-5-50-10. Circuit court judge sitting as judge of superior court — Superior judge sitting as judge of circuit court.

33-5-50-11. Standard small claims and misdemeanor division — Small claims referee.

33-5-50-1. Court established — Seal — Judicial district. — There is established a court of record to be known as the Whitley Superior Court (referred to as “the court” in this chapter). The court may have a seal containing the words “Whitley Superior Court, Whitley County, Indiana.” Whitley County comprises the judicial district of the court. [P.L.167-1984, § 64.]

33-5-50-2. Judge — Election — Term — Eligibility. — (a) The court has one (1) judge, who shall be elected at the general election every six (6) years in Whitley County. His term begins January 1 following his election and ends December 31 following the election of his successor.

(b) To be eligible to hold office as judge of the court, a person must:

(1) Be a resident of Whitley County;

(2) Be under seventy (70) years of age at the time he takes office; and

(3) Be admitted to the bar of Indiana.

[P.L.167-1984, § 64.]

33-5-50-3. Jurisdiction. — The court has the same jurisdiction as the Whitley Circuit Court, except that only the circuit court has juvenile jurisdiction. [P.L.167-1984, § 64.]

33-5-50-4. Powers of judge. — The judge of the court has the same powers relating to the conduct of the business of the court as the judge of the Whitley Circuit Court. The judge of the court also may administer oaths, solemnize marriages, and take and certify acknowledgments of deeds. [P.L.167-1984, § 64.]

33-5-50-5. Bailiff — Court reporter — Salaries. — The judge of the court shall appoint a bailiff and an official court reporter for the court; their salaries shall be fixed in the same manner as the salaries of the bailiff and official court reporter for the Whitley Circuit Court. Their salaries shall be paid monthly out of the treasury of Whitley County as provided by law. [P.L.167-1984, § 64.]

33-5-50-6. Clerk of court — Duties. — The clerk of the court, under the direction of the judge of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books for the court, which shall be kept separately from the books and papers of other courts. [P.L.167-1984, § 64.]

33-5-50-7. Courtroom — Facilities. — The court shall hold its sessions in the Whitley County courthouse in Columbia City, Indiana, or in such other places in the county as the board of county commissioners of Whitley County may provide. The board of county commissioners shall provide and maintain a suitable courtroom and other rooms and facilities, including furniture and equipment, as may be necessary. The county council of Whitley County shall appropriate sufficient funds for the provision and maintenance of such rooms and facilities. [P.L.167-1984, § 64.]

33-5-50-8. Juries — Selection — Jury commissioners — Grand jury. — The jury commissioners appointed by the judge of the Whitley Circuit Court shall serve as the jury commissioners for the court. Juries shall be selected in the same manner as juries for the Whitley Circuit Court. The grand jury selected for the Whitley Circuit Court shall also serve as the grand jury for the court as may be necessary. [P.L.167-1984, § 64.]

33-5-50-9. Transfer of actions. — The judge of the Whitley Circuit Court may, with the consent of the judge of the court, transfer any action or proceeding from the circuit court to the court. The judge of the court may, with consent of the judge of the circuit court, transfer any action or proceeding from the court to the circuit court. [P.L.167-1984, § 64.]

33-5-50-10. Circuit court judge sitting as judge of superior court — Superior judge sitting as judge of circuit court. — The judge of the Whitley Circuit Court may, with the consent of the judge of the court, sit as a judge of the court in any matter as if he was an elected judge of the court. The judge of the court may, with consent of the judge of the circuit court, sit as a judge of the circuit court in any matter as if he was an elected judge of the circuit court. [P.L.167-1984, § 64.]

33-5-50-11. Standard small claims and misdemeanor division — Small claims referee. — (a) The court has a standard small claims and misdemeanor division.

(b) If the county executive establishes the position of small claims referee to serve the court, the judge of the court may appoint a part-time small

claims referee under IC 33-5-2.5 to assist the court in the exercise of its small claims jurisdiction.

(c) The small claims referee is entitled to reasonable compensation not exceeding twenty thousand dollars (\$20,000) as recommended by the judge of the court to be paid by the county after it is approved by the county fiscal body. The state shall pay fifty percent (50%) of the salary set under this subsection, and the county shall pay the remainder of the salary.

(d) The county executive shall provide and maintain a suitable courtroom and facilities for the use of the small claims referee, including furniture and equipment, as necessary.

(e) The court shall employ administrative staff necessary to support the functions of the small claims referee.

(f) The county fiscal body shall appropriate sufficient funds for the provision of staff and facilities required under this section. [P.L.167-1984, § 64; P.L.392-1987(ss), § 22.]

Effective Dates. P.L.392-1987(ss), § 45.
January 1, 1988.

ARTICLE 5.1

MARION SUPERIOR COURT

CHAPTER.

1. DEFINITIONS, 33-5.1-1-1 — 33-5.1-1-4.
2. MARION SUPERIOR COURT, 33-5.1-2-1 — 33-5.1-2-27.
3. ADMINISTRATION OF THE SUPERIOR COURT, 33-5.1-3-1, 33-5.1-3-2.

CHAPTER.

4. MASTER COMMISSIONERS IN MARION SUPERIOR COURTS, 33-5.1-4-1 — 33-5.1-4-10.

CHAPTER 1

DEFINITIONS

SECTION.

- 33-5.1-1-1. Applicability of definitions.
33-5.1-1-2. City-county council.

SECTION.

- 33-5.1-1-3. Clerk.
33-5.1-1-4. Court.

33-5.1-1-1. Applicability of definitions. — The definitions in this chapter apply throughout this article. [P.L.16-1995, § 7.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 7 provided that this chapter take effect January 1, 1996.

33-5.1-1-2. City-county council. — “City-county council” refers to the Indianapolis, Marion County city-county council. [P.L.16-1995, § 7.]

33-5.1-1-3. Clerk. — “Clerk” refers to the clerk of the Marion superior court. [P.L.16-1995, § 7.]

33-5.1-1-4. Court. — “Court” refers to the Marion superior court. [P.L.16-1995, § 7.]

CHAPTER 2

MARION SUPERIOR COURT

SECTION.

- 33-5.1-2-1. Superior court established — Judges.
- 33-5.1-2-2. Court name.
- 33-5.1-2-3. Court seal.
- 33-5.1-2-4. Jurisdiction.
- 33-5.1-2-5. Effect of judgments, decrees, orders, and proceedings — Enforcement.
- 33-5.1-2-6. Adoption of rules — Authority of judges — Powers of court.
- 33-5.1-2-7. Orders, writs, and appointments.
- 33-5.1-2-8. Judges — Term — Nomination.
- 33-5.1-2-9. Executive committee — Division of court.
- 33-5.1-2-10. Court personnel — Salaries — Supplies — Other powers of executive committee.
- 33-5.1-2-11. Probate matters — Juvenile referee — Bail commissioner — Master commissioner — Powers.
- 33-5.1-2-12. Location of court facilities.

SECTION.

- 33-5.1-2-13. Clerk of court — Court papers and records.
- 33-5.1-2-14. Order book for each division.
- 33-5.1-2-15. Indiana laws and rules applicable.
- 33-5.1-2-16. Clerk of the court — Jury commissioners.
- 33-5.1-2-17. Appeals.
- 33-5.1-2-18. Process.
- 33-5.1-2-19. Transfer to superior court.
- 33-5.1-2-20. Transfer to circuit court.
- 33-5.1-2-21. Marion circuit court judge may sit as judge of court.
- 33-5.1-2-22. Judges' oath of office.
- 33-5.1-2-23. Judicial notice.
- 33-5.1-2-24. Costs of appeal.
- 33-5.1-2-25. Requirements of judges — Complaints — Mandatory retirement — Vacancies.
- 33-5.1-2-26. Appointment of magistrate.
- 33-5.1-2-27. Appointment of magistrates.

33-5.1-2-1. Superior court established — Judges. — (a) There is established a superior court in Marion County, Indiana. The court consists of:

- (1) Thirty-one (31) judges, until January 1, 2001; and
- (2) Thirty-two (32) judges, after December 31, 2000.

(b) To be qualified to serve as a judge of the court, a person must be, at the time a declaration of candidacy or a petition of nomination under IC 3-8-6 is filed:

- (1) A resident of Marion County; and
- (2) An attorney who has been admitted to the bar of Indiana for at least five (5) years.

(c) During the term of office, a judge of the court must remain a resident of Marion County. [P.L.16-1995, § 7.]

Compiler's Notes. P.L.16-1995, § 17, effective July 1, 1995, provides:

"(a) The following apply to the judges of the Marion municipal court serving on December 31, 1995:

"(1) The judge whose term as a municipal court judge expires December 31, 1995, and who is serving as municipal court judge on that date, is entitled to serve as a judge of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judge under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The person elected takes office January 1, 2001.

"(2) The three (3) judges whose terms as municipal court judges expire December 31,

1996, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(3) The three (3) judges whose terms as municipal court judges expire December 31, 1998, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general

election held November 7, 2000. The persons elected take office January 1, 2001.

"(4) The three (3) judges whose terms as municipal court judges expire May 31, 1997, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(5) The six (6) judges whose terms as municipal court judges expire December 31, 1997, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(b) This SECTION expires January 1, 2002."

P.L.16-1995, § 18, as amended by P.L.209-1996, § 18, effective March 21, 1996, provides:

"(a) The municipal court judge whose term expires December 31, 1997, and who is serving as a part-time judge on that date, is entitled to continue serving as a part-time judge of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000.

"(b) The following apply to the part-time judge described in subsection (a):

"(1) The judge may not practice criminal law in the Marion superior court, but may practice civil law in the Marion superior court.

"(2) The judge may convert to full-time status at any time.

"(c) If the judge serving as part-time judge of the Marion superior court stands for election in the general election held November 7, 2000, and any subsequent election, and is elected as judge of the Marion superior court, the judge may continue to serve as a part-time judge, subject to the provisions of subsection (b).

"(d) If it is determined in a judicial ethics action that the judge serving as part-time judge of the Marion superior court may not engage in the practice of civil law before the Marion superior court, the cases in which the judge has entered an appearance or filed any pleadings shall be transferred to the Marion circuit court for further proceedings. The judge may continue to participate in the cases transferred to the circuit court. Cases transferred to the circuit court under this subsec-

tion have the same effect as if originally filed in or issued by the Marion circuit court."

P.L.16-1995, § 19, effective July 1, 1995, provides:

"(a) Notwithstanding IC 33-5.1-2, as added by this act, the Marion superior court, consisting of thirty-one (31) judges, may not be established before January 1, 1996.

"(b) Notwithstanding IC 33-5.1-3, as added by this act, the administration of the Marion superior court may not occur before January 1, 1996.

"(c) This SECTION expires January 1, 2002."

P.L.16-1995, § 20, effective May 3, 1995, provides:

"(a) The judges of the Marion superior court and the judges of the Marion municipal court who are serving on June 1, 1995, shall, not later than July 1, 1995, elect two (2) presiding judges under subsection (b) who shall act as the executive committee for the newly formed Marion superior court. Notwithstanding IC 33-5.1-2-9(a), the executive committee elected under this subsection shall serve for a term beginning July 1, 1995, and ending December 31, 1996.

"(b) The two (2) presiding judges who shall act as the executive committee under this section must be elected as follows:

"(1) The republican judges of:

"(A) The Marion superior court; and

"(B) The Marion municipal court;

"shall elect one (1) republican presiding judge to serve on the executive committee.

"(2) The democrat judges of:

"(A) The Marion superior court; and

"(B) The Marion municipal court;

"shall elect one (1) democrat presiding judge to serve on the executive committee.

"(c) The interim executive committee for the newly formed Marion superior court elected under this section has all of the authority and limitations of the permanent executive committee elected under IC 33-5.1-2-9, as added by this act.

"(d) The executive committee shall submit to the fiscal body of Marion County a proposed budget for the operation of the superior court established under IC 33-5.1-2-1, as added by this act, and shall provide for transition as a thirty-one (31) member superior court on January 1, 1996. The proposed budget required by this subsection shall be submitted on the date specified by the fiscal body of Marion County.

"(e) Notwithstanding IC 33-5.1-2, as added by this act, the executive committee elected under this SECTION shall provide for the initial organization of the thirty-one (31) member superior court, including employment of a court administrator, and shall take other necessary steps to assure an orderly and efficient administration of the unified

court when it becomes operative on January 1, 1996.

"(f) This SECTION expires January 1, 2002."

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 7 provided that this chapter take effect January 1, 1996.

33-5.1-2-2. Court name. — The court shall be named and styled Marion superior court. [P.L.16-1995, § 7.]

33-5.1-2-3. Court seal. — The court shall have a seal consisting of a circular disk containing the words, "Marion Superior Court", "Indiana", and "Seal", and a design as the court may determine, an impression of which shall be spread of record upon the order book of the court. [P.L.16-1995, § 7.]

33-5.1-2-4. Jurisdiction. — The court has the following jurisdiction:

(1) Concurrent and coextensive jurisdiction with the Marion circuit court in all cases and upon all subject matters, including civil, criminal, juvenile, probate, and statutory cases and matters, whether original or appellate.

(2) Original and exclusive jurisdiction in all matters pertaining to the following:

(A) The probate and settlement of decedents' estates, trusts, and guardianships.

(B) The probate of wills.

(C) Proceedings to resist the probate of wills.

(D) Proceedings to contest wills.

(E) The appointment of guardians, assignees, executors, administrators, and trustees.

(F) The administration and settlement of:

(i) Estates of protected persons (as defined in IC 29-3-1-13) and deceased persons;

(ii) Trusts, assignments, adoptions, and surviving partnerships; and

(iii) All other probate matters.

(3) Original jurisdiction of all violations of Indiana law. Whenever jurisdiction is by law conferred on a small claims court, the court has the appellate jurisdiction provided by law.

(4) Original and exclusive juvenile jurisdiction.

[P.L.16-1995, § 7.]

NOTES TO DECISIONS

Construction.

Under the provisions of former IC 33-5-35.1-4, the Superior Court of Marion County had jurisdiction of proceedings for the liquidation of insurance companies under IC 27-9-3-5 — IC 27-9-3-7. *State ex rel. Ind. Life & Health Ins. Guar. Ass'n v. Superior Court*, 272 Ind. 421, 399 N.E.2d 356, 73 Ind. Dec. 539 (1980).

Former IC 33-5-35.1-4 granted jurisdiction to the Superior Court of Marion County whenever a statute granted jurisdiction to the Circuit Court of Marion County, although the latter statute may have been enacted later. *State ex rel. Ind. Life & Health Ins. Guar. Ass'n v. Superior Court*, 272 Ind. 421, 399 N.E.2d 356, 73 Ind. Dec. 539 (1980).

33-5.1-2-5. Effect of judgments, decrees, orders, and proceedings — Enforcement. — The court is a court of record. The court's judgments, decrees, orders, and proceedings have the same effect and shall be enforced in the same manner as those of the circuit court. [P.L.16-1995, § 7.]

33-5.1-2-6. Adoption of rules — Authority of judges — Powers of court. — (a) The court has full power to adopt rules for conducting the business of the court. Except as provided in subsection (b), in all matters action of the court may only be taken by a vote of a majority of the judges sitting at the time the vote is taken.

(b) Action of the court to remove the presiding judge or either associate presiding judge may only be taken by a vote of two-thirds (2/3) of the judges sitting at the time the vote is taken.

(c) The court has all the powers incident to a court of record in relation to the attendance of witnesses, punishment of contempts, and enforcement of the court's orders. The judges have full authority to administer oaths, solemnize marriages, take and certify acknowledgments of deeds and all legal instruments, and to give all necessary certificates for the authentication of the records and proceedings in the court. [P.L.16-1995, § 7.]

33-5.1-2-7. Orders, writs, and appointments. — The court has the power to do the following:

- (1) Grant restraining orders, injunctions, and writs of ne exeat.
- (2) Issue writs of habeas corpus.
- (3) Appoint receivers, masters, and commissioners to:
 - (A) Convey real property;
 - (B) Grant commissions for the examination of witnesses; and
 - (C) Appoint other officers necessary to transact the business of the court. [P.L.16-1995, § 7.]

33-5.1-2-8. Judges — Term — Nomination. — (a) Each judge of the court shall be elected for a term of six (6) years, that shall commence January 1 after the year of the judge's election and continue through December 31 in the sixth year. The judge shall hold office for the six (6) year term or until the judge's successor is elected and qualified. A candidate for judge shall run at large for the office of judge of the court and not as a candidate for judge of a particular room or division of the court.

(b) At the primary election a political party may nominate candidates for judge of the court as follows:

- (1) Beginning with the primary election held in 1996 and every six (6) years thereafter, a political party may nominate not more than eight (8) candidates for judge of the court.
- (2) Beginning with the primary election held in 2000 and every six (6) years thereafter, a political party may nominate not more than nine (9) candidates for judge of the court.

The candidates shall be voted on at the general election. Other candidates may qualify under IC 3-8-6 to be voted on at the general election.

(c) The names of the party candidates nominated and properly certified to the Marion County election board, along with the names of other candidates

who have qualified, shall be placed on the ballot at the general election in the form prescribed by IC 3-11-2. All persons eligible to vote at the general election may vote for candidates for judge of the court as follows:

(1) Beginning with the 1996 general election and every six (6) years thereafter, for fifteen (15) candidates for judge of the court.

(2) Beginning with the 2000 general election and every six (6) years thereafter, for seventeen (17) candidates for judge of the court.

(d) The candidates for judge of the court receiving the highest number of votes shall be elected to the vacancies. The names of the candidates elected as judges of the court shall be certified to the county election board as provided by law. [P.L.16-1995, § 7.]

Compiler's Notes. P.L.16-1995, § 17, effective July 1, 1995, provides:

"(a) The following apply to the judges of the Marion municipal court serving on December 31, 1995:

"(1) The judge whose term as a municipal court judge expires December 31, 1995, and who is serving as municipal court judge on that date, is entitled to serve as a judge of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judge under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The person elected takes office January 1, 2001.

"(2) The three (3) judges whose terms as municipal court judges expire December 31, 1996, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(3) The three (3) judges whose terms as municipal court judges expire December 31, 1998, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court

established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(4) The three (3) judges whose terms as municipal court judges expire May 31, 1997, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(5) The six (6) judges whose terms as municipal court judges expire December 31, 1997, and who are serving as municipal court judges on that date, are entitled to serve as judges of the Marion superior court established under IC 33-5.1-2, as added by this act, until midnight December 31, 2000. The initial election of the judges under IC 33-5.1-2, as added by this act, is the general election held November 7, 2000. The persons elected take office January 1, 2001.

"(b) This SECTION expires January 1, 2002."

33-5.1-2-9. Executive committee — Division of court. — (a) Not more than thirty (30) days after taking the oath of office, the judges shall meet and designate three (3) of the judges as the executive committee for administrative purposes. The executive committee shall be selected by a vote of two-thirds (2/3) of the judges sitting at the time the vote is taken. If all vacancies cannot be filled by a two-thirds (2/3) vote, vacancies may be filled by such other method as provided by court rule. The executive committee is responsible for the operation and conduct of the court. A member of the executive committee shall serve in the capacity provided by rules adopted by the court under section 6 [IC 33-5.1-2-6] of this chapter. A member of the executive committee serves for a term of two (2) years beginning on the date of the member's election. Any or all of the members elected to the executive committee may be reelected. Of the three (3) judges

elected to the executive committee, not more than two (2) may be members of the same political party.

(b) One (1) of the three (3) judges elected to the executive committee shall be elected as presiding judge and two (2) of the three (3) judges elected to the executive committee shall be elected as associate presiding judges. Each judge who is a member of the executive committee has an equal vote in all matters pertaining to the business of the court when an action requires a majority vote. Any action taken by the executive committee may be overruled by a vote of two-thirds (2/3) of all the judges sitting at the time the vote is taken. The physical reassignment of a judge to a different courtroom requires a unanimous vote of the executive committee. The executive committee shall assign cases, offices, and courtrooms for trial judges or reassignment of newly filed cases in the interests of the speedy, economical, and uniform disposition of cases. All matters of trial dates, continuances, and subpoenas used for trial shall be determined by the trial judge in accordance with rules of the superior court. The executive committee shall perform such other duties as determined by rules of the court.

(c) The court shall, by rules of the court, divide the work of the court into various divisions, including but not limited to the following:

- (1) Civil.
- (2) Criminal.
- (3) Probate.
- (4) Juvenile.

(d) The work of each division shall be allocated by the rules of the court.

(e) The judges shall be assigned to various divisions or rooms as provided by rules of the court. Whenever possible, an incumbent judge shall be allowed the option of remaining in a particular room or division. Whenever any action of the court is required, the judges of the court shall act in concert, by a vote under section 6 of this chapter. The court shall keep appropriate records of rules, orders, and assignments of the court. [P.L.16-1995, § 7.]

Compiler's Notes. P.L.16-1995, § 20, effective May 3, 1995, provides:

"(a) The judges of the Marion superior court and the judges of the Marion municipal court who are serving on June 1, 1995, shall, not later than July 1, 1995, elect two (2) presiding judges under subsection (b) who shall act as the executive committee for the newly formed Marion superior court. Notwithstanding IC 33-5.1-2-9(a), the executive committee elected under this subsection shall serve for a term beginning July 1, 1995, and ending December 31, 1996.

"(b) The two (2) presiding judges who shall act as the executive committee under this section must be elected as follows:

"(1) The republican judges of:

"(A) The Marion superior court; and

"(B) The Marion municipal court;

"shall elect one (1) republican presiding judge to serve on the executive committee.

"(2) The democrat judges of:

"(A) The Marion superior court; and

"(B) The Marion municipal court;

"shall elect one (1) democrat presiding judge to serve on the executive committee.

"(c) The interim executive committee for the newly formed Marion superior court elected under this section has all of the authority and limitations of the permanent executive committee elected under IC 33-5.1-2-9, as added by this act.

"(d) The executive committee shall submit to the fiscal body of Marion County a proposed budget for the operation of the superior court established under IC 33-5.1-2-1, as added by this act, and shall provide for transition as a thirty-one (31) member superior court on January 1, 1996. The proposed budget required by this subsection shall be submitted on the date specified by the fiscal body of Marion County.

"(e) Notwithstanding IC 33-5.1-2, as added by this act, the executive committee elected

under this SECTION shall provide for the initial organization of the thirty-one (31) member superior court, including employment of a court administrator, and shall take other necessary steps to assure an orderly

and efficient administration of the unified court when it becomes operative on January 1, 1996.

"(f) This SECTION expires January 1, 2002."

33-5.1-2-10. Court personnel — Salaries — Supplies — Other powers of executive committee. — (a) The executive committee, with the approval of two-thirds (2/3) of the judges, shall determine the number of hearing judges, commissioners, referees, bail commissioners, court reporters, probation officers, and other personnel required to efficiently serve the court. The salaries of the personnel shall be fixed and paid as provided by law.

(b) The administrative officers shall perform the duties prescribed by the executive committee and shall operate under the jurisdiction of the executive committee and serve at the pleasure of the executive committee.

(c) The executive committee shall see that the court at all times is amply provided with supplies and sufficient clerical and other help, including extra reporters or bailiffs, when needed. Each judge shall appoint the judge's court reporters, bailiffs, secretary, commissioners, and clerks. In addition to the specified duties of this subsection, the executive committee shall exercise any other powers and duties that may be assigned to the executive committee by an order book entry signed by a two-thirds (2/3) majority of the judges. At least once each month, a general term conference of all superior division judges must be held, at which the presiding judge shall preside. A special order book must be kept for the court in which shall be entered all special rules, proceedings, and similar matters. During an absence or vacation of a judge who is a member of the executive committee, the senior superior court judge shall act for the absent member, if necessary. [P.L.16-1995, § 7.]

NOTES TO DECISIONS

ANALYSIS

Commissioners.
Master commissioners.
—Report of findings.

Commissioners.

A commissioner acts as an instrumentality to inform and assist the court; only the court has authority to make final orders or judgments. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

The decision of a commissioner is a nullity from which no appeal can be taken. *Breaziel v. State*, 568 N.E.2d 1072 (Ind. App. 1991).

Master Commissioners.

A master commissioner has the same powers and duties as are prescribed by statute for

a magistrate *Dearman v. State*, 632 N.E.2d 1156 (Ind. App. 1994).

Master commissioner of Supreme Court has the same powers and duties as are prescribed by statute for a magistrate; therefore, commissioner did have the authority to try defendant for burglary and theft. *Scruggs v. State*, 637 N.E.2d 175 (Ind. App. 1994).

—Report of Findings.

Where, following his first appeal, defendant appeared before the regular judge of the superior court for a resentencing hearing, judge acted within his discretion at that hearing in adopting master commissioner's findings of fact and sentencing recommendations. *Scruggs v. State*, 637 N.E.2d 175 (Ind. App. 1994).

33-5.1-2-11. Probate matters — Juvenile referee — Bail commissioner — Master commissioner — Powers. — (a) An appointed probate

hearing judge or probate commissioner shall be vested by the judge of the probate division with suitable powers for the handling of all probate matters of the court, including the following:

- (1) Fixing of all bonds.
- (2) Auditing accounts of estates, guardianships, and trusts.
- (3) Acceptance of reports, accounts, and settlements filed in the court.
- (4) Appointment of personal representatives, guardians, and trustees.
- (5) Probating wills.
- (6) Taking or hearing evidence on or concerning matters described in this subsection or any other probate, guardianship, or trust matters in litigation before the court.
- (7) Enforcement of court rules.
- (8) Making reports to the court concerning the judge's or commissioner's doings in the proceedings described in this subsection, including reports concerning the commissioner's findings and conclusions regarding the proceedings.

However, all matters handled by a hearing judge or commissioner under this subsection are under the final jurisdiction and decision of the judge of the probate division.

(b) A juvenile referee appointed by the judge of the juvenile division shall have all suitable powers for the handling of the juvenile matters of the court, including the following:

- (1) Fixing of bonds.
- (2) Taking and hearing evidence on or concerning juvenile matters in litigation before the court.
- (3) Enforcement of court rules.
- (4) Making reports to the court concerning the juvenile referee's handling of proceedings of the juvenile division of the court.

However, all matters handled by a juvenile referee under this subsection are under final jurisdiction and decision of the judge or judges of the juvenile division designated by rules of the court.

(c) A bail commissioner shall have all suitable powers for the fixing of bonds, including the following:

- (1) Determining whether an individual is to be released on the individual's own recognizance in criminal cases and proceedings.
- (2) Making reports to the court concerning the bail commissioner's activities.

All matters handled by a bail commissioner under this subsection are under the final jurisdiction and decision of the judge or judges of the criminal division as designated by rules of the court.

(d) For any of the purposes specified in this section a probate hearing judge, probate commissioner, referee, or bail commissioner has the power to do the following:

- (1) Summon witnesses to testify before the probate hearing judge, probate commissioner, referee, or bail commissioner.
- (2) Administer oaths and take acknowledgments in connection with duties.
- (3) Administer oaths and take acknowledgments generally.

(e) A master commissioner appointed by the court under this section has the powers and duties prescribed for a magistrate under IC 33-4-7-4 through IC 33-4-7-8. A master commissioner shall report the findings in each of the matters before the master commissioner in writing to the judge or judges of the division to which the master commissioner is assigned or as designated by rules of the court. [P.L.16-1995, § 7.]

NOTES TO DECISIONS

ANALYSIS

Master commissioners.

—Powers.

Master Commissioners.

—Powers.

Master commissioner of the Marion Supe-

rior Title IV-D Court, appointed by the Marion County Superior Court, had authority to find father in contempt of court for failure to pay child support. *Moore v. Liggins*, 685 N.E.2d 57 (Ind. App. 1997).

33-5.1-2-12. Location of court facilities. — (a) The court shall hold sessions in the city-county building in the city of Indianapolis, Indiana, and in other places in Marion County as the court may determine.

(b) The city-county council shall provide and maintain in the building and at other places in Marion County as the court may determine suitable and convenient courtrooms for the holding of the court, suitable and convenient jury rooms, and offices for the judges, other court officers and personnel, and other facilities as may be necessary. The city-county council shall also provide all necessary furniture and equipment for rooms and offices of the court. [P.L.16-1995, § 7.]

33-5.1-2-13. Clerk of court — Court papers and records. — The clerk, under the direction of the court, shall provide order books, judgment dockets, execution dockets, fee books, and other books, papers, and records as may be necessary for the court. All books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts. [P.L.16-1995, § 7.]

33-5.1-2-14. Order book for each division. — The court shall maintain a single order book for each division or room of the court, which order book may be signed on behalf of the court by the judge of that division or room of the court. The signature of the judge authenticates the actions of the court. [P.L.16-1995, § 7.]

33-5.1-2-15. Indiana laws and rules applicable. — All laws of Indiana and rules adopted by the supreme court of Indiana governing the circuit court in matters of pleadings, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court are applicable to and govern the court. [P.L.16-1995, § 7.]

33-5.1-2-16. Clerk of the court — Jury commissioners. — (a) The clerk of the Marion circuit court and the jury commissioners appointed by the Marion circuit court shall serve as clerk and as jury commissioners for the court and shall be governed in all respects as provided by law.

(b) Jurors need not serve in the order in which the jurors are drawn by the jury commissioners.

(c) Any judge of the court may order the selection and summoning of other jurors for the court whenever other jurors may be necessary. The jurors shall serve the entire court and before any judge of the court where the jurors' services may be required. [P.L.16-1995, § 7.]

33-5.1-2-17. Appeals. — A party may appeal from an order or a judgment of the court in any case where an appeal may be had from a similar order or judgment of the circuit court. [P.L.16-1995, § 7.]

33-5.1-2-18. Process. — The process of the court shall have the seal affixed and process must be attested, directed, served, and returned, and must be in the form as provided for process issuing from the circuit court. [P.L.16-1995, § 7.]

33-5.1-2-19. Transfer to superior court. — The judge of the Marion circuit court may, with the consent of the court acting through the superior court presiding judge under rules adopted by the court, transfer any action, cause, or proceeding filed and docketed in the circuit court to the court by transferring all original papers and instruments filed in that action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the court. [P.L.16-1995, § 7.]

33-5.1-2-20. Transfer to circuit court. — The presiding judge may, with the consent of the judge of the Marion circuit court and under rules adopted by the court, transfer any action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Marion circuit court. [P.L.16-1995, § 7.]

33-5.1-2-21. Marion circuit court judge may sit as judge of court. — The judge of the Marion circuit court, at the judge's discretion, may sit as a judge of the court, with the court's permission, in all matters pending before the court, without limitation and without any further order, in the same manner as a judge of the court with all the rights and powers of an elected judge of the court. [P.L.16-1995, § 7.]

33-5.1-2-22. Judges' oath of office. — Each judge, before entering upon the duties of office, shall take and subscribe the following oath or affirmation:

"I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Indiana and that I will faithfully discharge the duties of judge of the superior court of Marion County to the best of my ability."

The oath shall be filed with the clerk of the county. [P.L.16-1995, § 7.]

33-5.1-2-23. Judicial notice. — The court shall take judicial notice of all matters of which courts of general jurisdiction of this state are required to take judicial notice, and the court shall also take judicial notice of all general ordinances of each city or municipality located in the county. [P.L.16-1995, § 7.]

33-5.1-2-24. Costs of appeal. — (a) When an appeal is taken from the court in criminal cases or proceedings under IC 34-28-5 (or IC 34-4-32 before its repeal), the amount of costs charged shall be certified as a part of the transcript and shall be charged as part of the costs in the court to which the appeal or proceeding is taken. The costs are in addition to any other clerk's service fee required by law.

(b) All costs charged in the court hearing or in the court trying an appeal shall be charged and adjudged upon the hearing or trial in the appeal against a defendant who is convicted or who pleads guilty.

(c) In an appeal under this section the defendant shall pay a transcript fee of thirty-five dollars (\$35) before the appeal may be transferred from the superior court. [P.L.16-1995, § 7; P.L.1-1998, § 179.]

33-5.1-2-25. Requirements of judges — Complaints — Mandatory retirement — Vacancies. — (a) A judge remains qualified to hold office as long as the judge:

- (1) Remains fair and impartial in judicial functions;
- (2) Maintains a high standard of morality in dealings, public and private;
- (3) Remains physically and mentally capable of performing all the functions and duties of the office of judge; and
- (4) Continues to reside in Marion County.

(b) Complaints against a judge shall be forwarded to the commission on judicial qualifications as provided in IC 33-2.1-5 by any judge of the superior court.

(c) A judge of the court must retire upon becoming seventy-five (75) years of age. If the judge wishes to retire before the judge's term has ended or upon reaching the mandatory retirement age, the judge shall provide written notice to the presiding judge of the court. The judge shall continue to hold office until a successor has been appointed and qualified.

(d) Whenever a vacancy occurs in the court by death, removal, retirement, or for any other reason, the governor shall appoint a successor judge who serves the balance of the term of the vacating judge. The successor judge must be a member of the same political party as the judge who is to be succeeded. [P.L.16-1995, § 7.]

33-5.1-2-26. Appointment of magistrate. — (a) The presiding judge may appoint one (1) full-time magistrate under IC 33-4-7.

(b) A magistrate appointed under this section may only hear:

- (1) criminal proceedings brought under IC 35-48; and

(2) drug related proceedings brought under IC 34-24-1 (or IC 34-4-30.1 before its repeal).

(c) The magistrate continues in office until removed by the presiding judge. [P.L.16-1995, § 7; P.L.1-1998, § 180.]

33-5.1-2-27. Appointment of magistrates. — (a) In addition to the magistrate appointed under section 26 [IC 33-5.1-2-26] of this chapter, the judges of the superior court may, by a vote of a majority of the judges, appoint four (4) full-time magistrates under IC 33-4-7.

(b) Not more than two (2) of the magistrates appointed under this section may be of the same political party.

(c) The magistrates continue in office until removed by the vote of a majority of the judges of the court.

(d) A party to a superior court proceeding that has been assigned to a magistrate appointed under this section may request that an elected judge of the superior court preside over the proceeding instead of the magistrate to whom the proceeding has been assigned. Upon a request made under this subsection by either party, the magistrate to whom the proceeding has been assigned shall transfer the proceeding back to the superior court judge. [P.L.18-1995, § 85.]

Effective Dates. P.L.18-1995, § 149, declared an emergency and § 85 provided that this section take effect January 1, 1996.

CHAPTER 3

ADMINISTRATION OF THE SUPERIOR COURT

SECTION.

33-5.1-3-1. Court administrator.

33-5.1-3-2. Clerk to supply form and materials.

33-5.1-3-1. Court administrator. — (a) The executive committee elected under IC 33-5.1-2-9 shall employ a court administrator to administer the business activities of the court. A court administrator is subject to rules of the court and oversight by the executive committee.

(b) The salary of the court administrator shall be set by the executive committee, but may not be more than eighty percent (80%) of the salary of a superior court judge. [P.L.16-1995, § 7.]

Compiler's Notes. P.L.16-1995, § 19, effective July 1, 1995, provides:

"(a) Notwithstanding IC 33-5.1-2, as added by this act, the Marion superior court, consisting of thirty-one (31) judges, may not be established before January 1, 1996.

"(b) Notwithstanding IC 33-5.1-3, as added by this act, the administration of the Marion

superior court may not occur before January 1, 1996.

"(c) This SECTION expires January 1, 2002."

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 7 provided that this chapter take effect January 1, 1996.

33-5.1-3-2. Clerk to supply form and materials. — (a) The clerk of the superior court shall furnish the following:

(1) All blanks, forms, and papers required for use in all criminal cases and in all civil actions involving actions by a city or town for violations of municipal penal ordinances.

(2) All books, papers, stationery, furniture, and other equipment and supplies necessary for keeping the records of the proceedings in all rooms of the superior court and for the transaction of all business of the court.

(3) Necessary computerization of court records.

(b) The materials required under this section shall be furnished at the expense of the county.

(c) The presiding judge of the court, by an order entered on the court records signed by the presiding judge, shall determine and prescribe the forms of the following:

(1) All summonses, notices, subpoenas, warrants, affidavits, complaints, writs, and all other papers and anything else required to be used in the cases relating to violations of criminal statutes or municipal ordinances.

(2) All other books, records, papers, and documents to be used by the court and by the officers of the court and the prosecutors.

In the absence of an order under this subsection, those charged with the duty of prosecuting cases involving either criminal offenses or the violation of municipal ordinances may adopt, change, order, and use all necessary forms and instruments as conform substantially to the practice and procedure applicable. [P.L.16-1995, § 7.]

CHAPTER 4

MASTER COMMISSIONERS IN MARION SUPERIOR COURTS

SECTION.

33-5.1-4-1. Applicability to Marion superior courts.

33-5.1-4-2. Appointment of master commissioners.

33-5.1-4-3. Powers.

33-5.1-4-4. Findings authorized — Duties of judge.

33-5.1-4-5. Jury trial in civil case.

SECTION.

33-5.1-4-6. Jury trial in criminal case.

33-5.1-4-7. Power of presiding judge to limit rights and powers of commissioner.

33-5.1-4-8. Service as judge pro tempore or as special judge.

33-5.1-4-9. No power of judicial mandate.

33-5.1-4-10. Compensation.

33-5.1-4-1. Applicability to Marion superior courts. — This chapter applies to Marion superior courts. [P.L.1-1998, § 59.]

33-5.1-4-2. Appointment of master commissioners. — The presiding judge of the court may appoint in writing master commissioners necessary to conduct the business of the court. A master commissioner must be a competent attorney in good standing. A master commissioner continues in office until removed by the presiding judge. [P.L.1-1998, § 59.]

33-5.1-4-3. Powers. — A master commissioner may:

- (1) administer all oaths and affirmations required by law;
- (2) take and certify affidavits and depositions;

- (3) issue subpoenas for witnesses whose testimony is to be taken before the master commissioner;
- (4) compel the attendance of witnesses and punish contempts as the judge of the court;
- (5) conduct preliminary hearings in criminal matters;
- (6) issue search warrants and arrest warrants and fix bond on them; and
- (7) enforce court rules.

[P.L.1-1998, § 59.]

33-5.1-4-4. Findings authorized — Duties of judge. — A master commissioner may hear evidence upon and report findings to the judge of the court for each matter referred to the master commissioner by the judge. However, the judge of the court shall:

- (1) make the final judgment in such a matter; and
- (2) in a criminal case tried by the court, conduct all sentencing hearings in such a case. [P.L.1-1998, § 59.]

33-5.1-4-5. Jury trial in civil case. — A master commissioner may conduct a jury trial and receive the verdict of the jury in a civil case referred to the master commissioner by the judge of the court, but the judge shall make and enter the judgment on the jury verdict in such a case. [P.L.1-1998, § 59.]

33-5.1-4-6. Jury trial in criminal case. — A master commissioner may conduct a jury trial and receive the verdict of the jury in a criminal case referred to the master commissioner by the judge of the court, but the judge shall conduct all sentencing hearings and pronounce all final judgments in such a case. [P.L.1-1998, § 59.]

33-5.1-4-7. Power of presiding judge to limit rights and powers of commissioner. — The presiding judge may limit any of the rights or powers of the commissioner prescribed in section 3, 4 or 8 [IC 33-5.1-4-3, IC 33-5.1-4-4, IC 33-5.1-4-8] of this chapter and the presiding judge may specifically determine the duties of the commissioner, within the limits prescribed in sections 3, 4, and 8 of this chapter. [P.L.1-1998, § 59.]

33-5.1-4-8. Service as judge pro tempore or as special judge. — A master commissioner may serve as a judge pro tempore or a special judge of the court but is not entitled to additional compensation for the service. [P.L.1-1998, § 59.]

33-5.1-4-9. No power of judicial mandate. — A master commissioner does not have the power of judicial mandate. [P.L.1-1998, § 59.]

33-5.1-4-10. Compensation. — A master commissioner is entitled to reasonable compensation:

- (1) determined by the presiding judge; and

(2) paid by the county as an inclusion on the court's payroll voucher.
[P.L.1-1998, § 59.]

ARTICLE 5.5

COUNTY COURTS

33-5.5-1-1 — 33-5.5-2-26. [Repealed.]

Compiler's Notes. This article, concerning 1975, P.L. 305, § 54. For present law, see IC certain county courts, was repealed by Acts 33-10.5.

ARTICLE 6

MUNICIPAL COURTS

CHAPTER

1, 2. [REPEALED.]

3. ORDINANCE VIOLATIONS BUREAU, 33-6-3-1 —
33-6-3-5.

CHAPTER 1

MUNICIPAL COURT OF MARION COUNTY

33-6-1-1 — 33-6-1-30. [Repealed.]

Compiler's Notes. This chapter, concerning the Municipal Court of Marion County, was repealed by P.L.16-1995, § 15, effective January 1, 1996.

IC 33-6-1-4, which concerned practice and pleading in the Municipal Court of Marion County, was also repealed by Acts 1978, P.L. 2, § 3308.

IC 33-6-1-9, concerning appeals in criminal cases, was also repealed by Acts 1980, P.L. 191, § 2.

IC 33-6-1-20 through IC 33-6-1-22, concerning court matron or probation officer, bailiff and official reporters, were also repealed by

Acts 1979, P.L. 280, § 10. IC 33-6-1-20 was also repealed by Acts 1979, P.L. 120, § 22.

IC 33-6-1-25 through IC 33-6-1-29.5, concerning abolition of the Indianapolis city court, validation of certain acts and matters, construction with acts passed at the same session, summary, plenary and criminal dockets and procedure, and the transfer of proceedings and records from the abolished magistrate courts to the municipal court, were also repealed by Acts 1978, P.L. 2, § 3308, Acts 1979, P.L. 280, § 10, Acts 1981, P.L. 272, § 146, and P.L.1-1989, § 75.

CHAPTER 2

JURISDICTION AND POWERS

33-6-2-1, 33-6-2-2. [Repealed.]

Compiler's Notes. This chapter, which concerned the construction of acts relating to the former magistrates courts in counties

having municipal courts, was repealed by Acts 1978, P.L. 2, § 3308.

CHAPTER 3

ORDINANCE VIOLATIONS BUREAU

SECTION.

33-6-3-1. Ordinance violations bureau authorized for municipal corporations — Violations clerk.

33-6-3-2. Settlement of violation with clerk.

SECTION.

33-6-3-3. Initiation of court proceedings.

33-6-3-4. Disposition of funds collected by clerk.

33-6-3-5. Exceptions to IC 33-19.

33-6-3-1. Ordinance violations bureau authorized for municipal corporations — Violations clerk. — (a) The definitions in IC 36-1-2 apply throughout this chapter.

(b) The legislative body of a municipal corporation may establish, by ordinance or code, an ordinance violations bureau. Upon the creation of a bureau, the legislative body shall provide for the appointment of a violations clerk (who may be the clerk or clerk-treasurer of the municipal corporation) to be the administrator of the bureau.

(c) If the legislative body does not establish an ordinance violations bureau under subsection (b), the clerk or clerk-treasurer of the municipal corporation is designated the violations clerk for purposes of this chapter.

(d) The violations clerk may accept written appearances, waivers of trial, admissions of violations, and payment of civil penalties of not more than one hundred dollars (\$100) in ordinance violation cases, subject to the schedule prescribed under section 2 [IC 33-6-3-2] of this chapter by the legislative body. [IC 33-6-3-1, as added by Acts 1980, P.L. 8, § 160; P.L.177-1988, § 1; P.L.283-1989, § 1; P.L.85-1998, § 1.]

Cross References. Enforcement of ordinance violations, IC 36-1-6-3.

33-6-3-2. Settlement of violation with clerk. — (a) Upon the appointment or designation of the violations clerk as provided by section 1 [IC 33-6-3-1] of this chapter, the legislative body shall designate, by ordinance or code, a schedule of ordinance and code provisions of the municipal corporation that are subject to admission of violation before the violations clerk and the amount of civil penalty to be assessed a violator who elects to admit a violation under this chapter. Civil penalties shall be paid to, receipted, and accounted for by the clerk under procedures provided for by the state board of accounts. Payment of civil penalties under this chapter may be made in person, by mail, or to an agent or agents designated by the legislative body.

(b) A person charged with an ordinance or code violation under this chapter is entitled to a trial before a court as provided by law, unless the person waives the right to trial and enters an admission of the violation with the violations clerk. Upon such an admission, the clerk shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established under subsection (a).

(c) If a person charged with a violation under this chapter wants to exercise the right to trial, the person shall appear before the violations clerk and deny the violation or enter a written denial with the clerk.

(d) In a county having a consolidated city, the schedule of ordinance violations designated by a municipal corporation under this section must also be approved by the city-county legislative body. [IC 33-6-3-2, as added by Acts 1980, P.L. 8, § 160; P.L.177-1988, § 2.]

Compiler's Notes. According to IC 36-3-1, only consolidated city is Indianapolis in IC 36-4-1-1 and the 1990 federal census, the Marion County.

33-6-3-3. Initiation of court proceedings. — (a) If a person:

- (1) Denies an ordinance or code violation under this chapter;
- (2) Fails to satisfy a civil penalty assessed by the violations clerk after having entered an admission of violation; or
- (3) Fails to deny or admit the violation under this chapter;

the clerk shall report this fact to the official having the responsibility to prosecute ordinance violation cases for the municipal corporation.

(b) Proceedings in court against the person shall then be initiated for the alleged ordinance violation. [IC 33-6-3-3, as added by Acts 1980, P.L. 8, § 160; P.L.177-1988, § 3.]

33-6-3-4. Disposition of funds collected by clerk. — All sums collected by the violations clerk as civil penalties for ordinance violations shall be accounted for and paid to the municipal corporation as provided by law. [IC 33-6-3-4, as added by Acts 1980, P.L. 8, § 160; P.L.177-1988, § 4.]

33-6-3-5. Exceptions to IC 33-19. — An ordinance violation admitted under this chapter does not constitute a judgment for the purposes of IC 33-19, and an ordinance violation costs fee may not be collected from the defendant under IC 33-19-5. In addition, an ordinance violation processed under this chapter may not be considered for the purposes of IC 33-19-7-3 when determining the percentage of ordinance violations prosecuted in certain courts. [P.L.177-1988, § 5.]

Cross References. Exception from alcohol and drug services program fee and law enforcement continuing education program fee, IC 33-19-6-7.

Exception from ordinance violation costs fee, IC 33-19-5-2(d).

ARTICLE 7

MAGISTRATE COURTS

33-7-1-1 — 33-7-2-7. [Repealed.]

Compiler's Notes. This article, concerning magistrate courts in certain counties was repealed by Acts 1971, P.L. 433, § 17, Acts 1975, P.L. 305, § 54, and P.L.1-1993, § 230,

effective May 4, 1993. For present similar provisions relating to county courts, see IC 33-10.5.

ARTICLE 8

PROBATE COURTS

CHAPTER.

1. [REPEALED.]
2. ST. JOSEPH PROBATE COURT, 33-8-2-1 — 33-8-2-25.

CHAPTER 1

PROBATE COURT OF MARION COUNTY

33-8-1-1 — 33-8-1-22. [Repealed.]

Compiler's Notes. This chapter, concerning the Probate Court of Marion County, was repealed by Acts 1975, P.L. 308, § 2.

CHAPTER 2

ST. JOSEPH PROBATE COURT

SECTION.

- 33-8-2-1. Court established.
- 33-8-2-2. Court of record — Seal.
- 33-8-2-3. Election of judge — Vacancy filled by governor.
- 33-8-2-4. Clerk and sheriff — Fees.
- 33-8-2-5. Clerk and sheriff — Duties.
- 33-8-2-6. Where court held — Provision by board of commissioners.
- 33-8-2-7. Adjournments.
- 33-8-2-8. When term extended.
- 33-8-2-9. Jurisdiction.
- 33-8-2-10. Juvenile jurisdiction.
- 33-8-2-11. Probate and juvenile causes to be transferred.
- 33-8-2-12. Judge competent to act in other courts.
- 33-8-2-13. Judge pro tem.
- 33-8-2-14. Compensation of judge pro tem.

SECTION.

- 33-8-2-15. Process.
- 33-8-2-16. Court of record — Enforcement of judgments and decrees.
- 33-8-2-17. Rules and regulations — Incidental powers of judge.
- 33-8-2-18. Record books.
- 33-8-2-19. Orders, writs, appointments, commissions.
- 33-8-2-20. Appeals to Supreme Court or Court of Appeals.
- 33-8-2-21. Docket fees.
- 33-8-2-22. Salary of judge — Special judges.
- 33-8-2-23. Chief clerk and other employees — Appointment — Salaries.
- 33-8-2-24. Appointment of probation officers.
- 33-8-2-25. Magistrate — Appointment — Jurisdiction.

33-8-2-1. Court established. — There is hereby created and established a probate court in the county of St. Joseph to be known as the St. Joseph Probate Court, to be presided over by one judge to be chosen as herein provided. [Acts 1945, ch. 333, § 1, p. 1552.]

33-8-2-2. Court of record — Seal. — Such court shall be a court of record, and shall have a seal and device, as the judge thereof may choose, and the name of the county on the face thereof; and a description and impression thereof shall be spread on the order-book of the court. [Acts 1945, ch. 333, § 2, p. 1552.]

33-8-2-3. Election of judge — Vacancy filled by governor. — The court shall consist of one (1) judge, to be elected by the legal voters of said county for the term of six (6) years, beginning on the first day of January

following his election, and until his successor shall be elected and qualified. The election shall be had at the time of the general election every six (6) years. Said judge shall be commissioned by the governor in the same manner as judges of the circuit court; and all vacancies occurring in the office of judge of such probate court shall be filled by appointment by the governor, in the same manner as vacancies in the office of judge of the circuit court. [Acts 1945, ch. 333, § 3, p. 1552; 1976, P.L. 133, § 34.]

Cross References. Judges, admission to practice of law as qualification, IC 33-13-9-1.
Judges, appointment by the governor, Ind. Const., Art. 5, § 18.

Judges, commencement and expiration of terms of office, IC 33-13-5-1.

33-8-2-4. Clerk and sheriff — Fees. — The clerk of the circuit court and the sheriff of the county where such court is organized shall be respectively the clerk and sheriff of said court; and for their services they shall each be entitled to such fees as are or may be allowed in the circuit court for like services. [Acts 1945, ch. 333, § 4, p. 1552.]

33-8-2-5. Clerk and sheriff — Duties. — The clerk and sheriff shall attend said court and discharge all the duties pertaining to their respective offices as they are now or may hereafter be required to do, by law, in the circuit court; and all laws now in force, or which may be enacted, prescribing the duties and liability of such officers, and the mode of proceeding against them, or either of them for any neglect of official duty, allowing fees and providing for the collection thereof, in the circuit court, shall be held and deemed to extend to said probate court, as far as they apply. [Acts 1945, ch. 333, § 5, p. 1552.]

33-8-2-6. Where court held — Provision by board of commissioners. — The said probate court shall hold its sessions at the courthouse of the county, or at such other convenient place as court shall designate in such county, and the county commissioners shall provide suitable quarters therefor. [Acts 1945, ch. 333, § 6, p. 1552.]

33-8-2-7. Adjournments. — The judge of said court may adjourn the same on any day previous to the expiration of the time for which it may be held, and also from any one day in the term over to any other day in the same term, if in his opinion the business of the court will admit thereof. [Acts 1945, ch. 333, § 8, p. 1552.]

33-8-2-8. When term extended. — Whenever a trial is begun and in progress at the time when by law, the term of such court would expire, the term shall be extended until the close of such trial. [Acts 1945, ch. 333, § 9, p. 1552.]

33-8-2-9. Jurisdiction. — The probate court within and for the county for which it is organized has original, concurrent jurisdiction with the superior courts of the county in all matters pertaining to the probate of wills,

proceedings to resist probate of wills, proceedings to contest wills, the appointment of guardians, assignees, executors, administrators, and trustees, the administration and settlement of estates of protected persons (as defined in IC 29-3-1-13) and deceased persons, the administration of trusts, assignments, adoption proceedings and surviving partnerships, and in all other probate matters. The probate court shall not have and exercise jurisdiction in civil actions. [Acts 1945, ch. 333, § 10, p. 1552; 1959, ch. 260, § 1; 1981, P.L. 272, § 89; P.L.33-1989, § 114.]

Res Gestae. Probate & Property, 36 Res Gestae 476 (1993).

NOTES TO DECISIONS

ANALYSIS

Construction.
Criminal proceedings.
Foreclosure proceedings.
Powers of court.
Transfer of civil actions.

Construction.

Being a creature of the legislature the St. Joseph Probate Court had such jurisdiction only as was granted by the statutes creating it, and such as were necessarily implied to enable it to function as a probate court. *Wedmore v. State*, 233 Ind. 545, 122 N.E.2d 1 (1954).

The legislature did not intend to give the St. Joseph Probate Court general civil and criminal jurisdiction. *Wedmore v. State*, 233 Ind. 545, 122 N.E.2d 1 (1954).

Criminal Proceedings.

The St. Joseph Probate Court not having jurisdiction over subject matter in criminal prosecution, the parties by agreement or otherwise could not endow it with such jurisdiction. *Wedmore v. State*, 233 Ind. 545, 122 N.E.2d 1 (1954).

Foreclosure Proceedings.

The St. Joseph Probate Court had original

and concurrent jurisdiction with the circuit and superior courts in all civil and probate matters hence foreclosure proceedings were within the jurisdiction of said probate court. *Schulz v. Graham*, 234 Ind. 243, 126 N.E.2d 1 (1955).

Powers of Court.

A probate court being a creature of the legislature could only act under the powers granted by the legislature, and the entire statute creating the probate court, as well as the legislative journal could be considered to determine intent of the act. *Schulz v. Graham*, 234 Ind. 243, 126 N.E.2d 1 (1955).

Transfer of Civil Actions.

Where the Indiana general assembly saw fit to take away from the probate court of St. Joseph County all jurisdiction in civil actions, allowing a ten-day period after the effective date of the amendatory act passed for the transfer of any civil action pending in such court, the attempt by such court to transfer this divorce action after the expiration of such ten-day period was in all things void, and a new trial would be ordered to afford appellant the constitutional rights granted him. *Zarembka v. Zarembka*, 135 Ind. App. 406, 181 N.E.2d 867 (1962), transfer denied, 244 Ind. 503, 193 N.E.2d 903 (1963).

33-8-2-10. Juvenile jurisdiction. — The probate court has exclusive juvenile jurisdiction in St. Joseph County. [Acts 1945, ch. 333, § 11, p. 1552; 1978, P.L. 136, § 53.]

33-8-2-11. Probate and juvenile causes to be transferred. — Upon the organization of said probate court, all probate and juvenile causes pending in the circuit court of such county shall be transferred to such probate court. And all warrants, subpoenas, rules, orders of court, and other process which may have issued from the circuit court of such county, in such probate causes, shall be returnable to the probate court upon the first day of the first term thereof to be holden; and said probate court shall have

jurisdiction thereof, and proceed therein; and all proceedings in probate and juvenile causes in said court shall be conducted as proceedings are or may be required, by law, to be conducted in the circuit court in the counties having no probate court. [Acts 1945, ch. 333, § 12, p. 1552.]

33-8-2-12. Judge competent to act in other courts. — Any judge of said probate court shall be competent to act as judge of any circuit court or superior court upon the trial of any cause or proceeding, when the judge of said circuit or superior court may be incompetent to try the cause; or a change of venue be granted for objection to the judge thereof. [Acts 1945, ch. 333, § 14, p. 1552.]

Cross References. Change of judge, venue, grounds for, IC 34-35-1-1, Rule TR. 76.

33-8-2-13. Judge pro tem. — If, from any cause any judge of said probate court shall be unable to attend and preside at any term of said court, or during any part of a term, such judge may appoint, in writing any attorney eligible to the office of such judge, at such term or part of a term. Such written appointment shall be entered of record in said court, and if the appointee is not a judge of a court of record he shall take the same oath required by law of judges of the probate court, and such appointee shall have the same power and authority during the continuance of his appointment as a regularly elected judge of said court. [Acts 1945, ch. 333, § 15, p. 1552.]

Cross References. Judges pro tempore appointed by the Supreme Court, Rule TR. 63.

33-8-2-14. Compensation of judge pro tem. — Whenever any person shall be appointed judge pro tem under the provisions of this chapter he shall be entitled to ten dollars (\$10.00) for each day he may serve as such judge, to be paid out of the county treasury, where such probate court is held, upon the warrant of the county auditor, based upon the filing of a claim therefor approved by the judge of said court. Any amount in excess of five hundred dollars (\$500) allowed to any judge pro tem, during any year shall be deducted by the board of county commissioners from the regular annual salary of the judge of such probate court, making the appointment, except where such judge pro tem shall be appointed on account of change of venue, relationship, interest as former counsel, or absence of judge in case of serious sickness of himself or family. [Acts 1945, ch. 333, § 16, p. 1552; 1981, P.L. 272, § 90.]

Compiler's Notes. TR. 63(D) provides for the amount of compensation to be paid a judge pro tempore appointed locally.

33-8-2-15. Process. — The process of said court shall have the seal affixed, and be attested, directed, served and returned, and be in form as is or may be provided for process issuing from the circuit court. [Acts 1945, ch. 333, § 17, p. 1552.]

Cross References. Commencement of actions and issuance and service of process, Rules TR. 3, 4 — 4.17.

33-8-2-16. Court of record — Enforcement of judgments and decrees. — Said court shall be a court of record and of general jurisdiction, and its judgments, decrees, orders and proceedings shall have the same force and effect as those of the circuit court and shall be enforced in the same manner. [Acts 1945, ch. 333, § 18, p. 1552.]

33-8-2-17. Rules and regulations — Incidental powers of judge. — The judge of said court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the power incident to a court of record and of general original jurisdiction, in relation to the attendance of witnesses, the punishment of contempts, and enforcing its orders. And the judges of said court shall each have full authority to administer oaths, take and certify acknowledgments of deeds, and give all necessary certificates for the authentication of the records and proceedings in said court. [Acts 1945, ch. 333, § 19, p. 1552.]

33-8-2-18. Record books. — The clerk shall, under the direction of the judge, provide for such court order-books, judgment dockets, execution dockets, fee-books, and such other books, records and supplies as may be necessary; and all books, papers and proceedings of said court shall be kept distinct and separate from those of other courts. [Acts 1945, ch. 333, § 20, p. 1552.]

33-8-2-19. Orders, writs, appointments, commissions. — The judge of said court shall have the same power as the circuit court of said county in term or in vacation, to grant restraining orders, injunctions, and writs of ne exeat; to issue writs of habeas corpus, and of mandate and prohibition; to appoint receivers, master commissioners for the examination of witnesses, and other officers necessary to facilitate and transact the business of such court. [Acts 1945, ch. 333, § 21, p. 1552.]

Cross References. Commencement of actions and the issuance and service of process, Rules TR. 3, 4 — 4.17.

33-8-2-20. Appeals to Supreme Court or Court of Appeals. — Any party may appeal to the supreme court or the court of appeals from the order or judgment of the court in any case in which, under existing or future laws of this state, an appeal may be had from an order or judgment of the circuit court. The appeal shall be regulated by the law regulating appeals from the circuit court to the court of appeals and the supreme court, so far as applicable. An appeal may also be taken to the court of appeals and the supreme court in the same manner and in like cases as from circuit courts. [Acts 1945, ch. 333, § 22, p. 1552; P.L.3-1989, § 200.]

NOTES TO DECISIONS

In General.

Where, after an adoption proceeding had been instituted in the St. Joseph Circuit Court sitting as a juvenile court, the St. Joseph Probate Court was created, to which the case was transferred, an appeal from the final judgment entered therein should be taken in the same manner as appeals are perfected from final judgments under the civil code and rules of the Supreme Court. *Attkisson v. Usrey*, 224 Ind. 155, 65 N.E.2d 489 (1946).

Where, after an adoption proceeding had been instituted in the St. Joseph Circuit Court sitting as a juvenile court, the St. Joseph Probate Court was created, to which the case was transferred, the case was entirely divorced from the juvenile court and was not subject to any of the provisions of the Juvenile Court Act, including provisions therein, if any, for a special appeal. *Attkisson v. Usrey*, 224 Ind. 155, 65 N.E.2d 489 (1946).

33-8-2-21. Docket fees. — The same docket fees shall be taxed in the said court as are now or may be provided by law to be taxed in the circuit court and the said fees, when collected, shall be paid by the clerk to the treasurer of the county to be applied in reimbursing the county for expenses of said court. [Acts 1945, ch. 333, § 23, p. 1552.]

33-8-2-22. Salary of judge — Special judges. — (a) The salary of the judge of such probate court shall be the same as that of the judge of the circuit court of such county, and the salary of such judge and the compensation of a judge pro tempore shall be paid in the same manner respectively and from the same sources as the judge of said circuit court or judges pro tempore of said court.

(b) A full-time judge of a probate court may not be paid compensation for serving as a special judge, except reasonable expenses for meals, lodging, travel, and other incidental expenses approved by the state court administrator. [Acts 1945, ch. 333, § 24, p. 1552; P.L.279-1995, § 4; P.L.280-1995, § 4.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 4 provided that the amendment take effect August 1, 1997.

Cross References. Salary of judges, IC 33-13-12-2 — IC 33-13-12-9.

33-8-2-23. Chief clerk and other employees — Appointment — Salaries. — Said probate court may appoint a chief clerk and such other employees as he deems necessary whose salaries shall be fixed by said judge and be paid out of the county treasury. [Acts 1945, ch. 333, § 25, p. 1552.]

33-8-2-24. Appointment of probation officers. — Said probate judge shall appoint such probation officers as are authorized by law to be appointed by the judge having juvenile jurisdiction, which probation officers shall perform the same duties and receive the same compensation as is by law provided. [Acts 1945, ch. 333, § 26, p. 1552.]

33-8-2-25. Magistrate — Appointment — Jurisdiction. — In addition to any appointments made by the judge of the St. Joseph probate court under IC 31-31-3, the judge of the St. Joseph probate court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate may exercise:

- (1) probate jurisdiction under IC 33-8-2-9; and
 - (2) juvenile jurisdiction under IC 33-8-2-10;
- and continues in office until removed by the judge. [P.L.18-1995, § 103; P.L.1-1997, § 126.]

ARTICLE 9

PUBLIC DEFENDERS

CHAPTER

- 1- 9. [REPEALED.]
- 10. COUNSEL FOR THE INDIGENT, 33-9-10-1 — 33-9-10-4.
- 11. PUBLIC DEFENDERS, 33-9-11-1 — 33-9-11-6.
- 11.5. SUPPLEMENTAL FUNDING FOR PUBLIC DEFENDER SERVICES, 33-9-11.5-1 — 33-9-11.5-10.
- 12. PUBLIC DEFENDER COUNCIL, 33-9-12-1 — 33-9-12-4.

CHAPTER

- 13. PUBLIC DEFENDER COMMISSION, 33-9-13-1 — 33-9-13-4.
- 14. PUBLIC DEFENSE FUND, 33-9-14-1 — 33-9-14-6.
- 15. COUNTY PUBLIC DEFENDER BOARDS, 33-9-15-1 — 33-9-15-11.

CHAPTER 1

ORGANIZATION

33-9-1-1 — 33-9-1-8. [Repealed.]

Compiler's Notes. This chapter, which concerned the organization, officers, and jurisdiction of criminal courts, was repealed by

Acts 1978, P.L. 2, § 3309. At the time Acts 1978, P.L. 2 was passed the only criminal court was in Marion County.

CHAPTER 2

JUDGE PRO TEM

33-9-2-1, 33-9-2-2. [Repealed.]

Compiler's Notes. This chapter, which concerned criminal court judges pro tempore, was repealed by Acts 1978, P.L. 2, § 3309. At

the time Acts 1978, P.L. 2 was passed the only criminal court was in Marion County.

CHAPTER 3

CHIEF CLERK MAY BE APPOINTED

33-9-3-1. [Repealed.]

Compiler's Notes. This chapter, which concerned the appointment of chief clerks in criminal courts of counties having populations of 300,000 or more, was repealed by Acts

1978, P.L. 2, § 3309. At the time Acts 1978, P.L. 2 was passed the only criminal court was in Marion County.

CHAPTER 4

SPECIAL JUDGE MAY BE APPOINTED

33-9-4-1, 33-9-4-2. [Repealed.]

Compiler's Notes. This chapter, which concerned criminal court special judges in counties of 300,000 or more population, was

repealed by Acts 1978, P.L. 2, § 3309. At the time Acts 1978, P.L. 2 was passed the only criminal court was in Marion County.

CHAPTER 5

INVESTIGATOR MAY BE APPOINTED

33-9-5-1. [Repealed.]

Compiler's Notes. This chapter, which concerned criminal court investigators in counties having populations of 400,000 or more, was repealed by Acts 1978, P.L. 2,

§ 3309. At the time Acts 1978, P.L. 2 was passed the only criminal court was in Marion County.

CHAPTER 6

PUBLIC DEFENDER MAY BE APPOINTED

33-9-6-1 — 33-9-6-3. [Repealed.]

Compiler's Notes. This chapter, which concerned public defenders in counties having criminal courts and populations of 400,000 or more, was repealed by Acts 1978, P.L. 2,

§ 3309. For present provisions concerning public defenders, see IC 33-9-11-1 — IC 33-9-11-5.

CHAPTER 7

COMMISSIONERS MAY BE APPOINTED

33-9-7-1, 33-9-7-2. [Repealed.]

Compiler's Notes. These sections, concerning appointment, duties and salary of

commissioner, were repealed by Acts 1973, P.L. 308, § 2.

CHAPTER 8

TRANSFER OF CASES TO CIRCUIT COURTS IN CERTAIN COUNTIES

33-9-8-1, 33-9-8-2. [Repealed.]

Compiler's Notes. This chapter, which provided for the transfer of cases to circuit courts in counties having separate criminal courts and populations of 150,000 — 300,000, was repealed by Acts 1978, P.L. 2, § 3309.

There were no counties maintaining separate criminal courts which had populations of 150,000 — 300,000 according to the 1970 federal census.

CHAPTER 9

DIVISIONS OF CRIMINAL COURT IN CERTAIN COUNTIES

33-9-9-1 — 33-9-9-12. [Repealed.]

Compiler's Notes. This chapter, concerning the divisions of criminal courts, was repealed by Acts 1975, P.L. 308, § 2.

CHAPTER 10
COUNSEL FOR THE INDIGENT

SECTION.

- 33-9-10-1. Judges of courts of criminal jurisdiction authorized to contract for defense of indigents.
33-9-10-2. Fee established by court.

SECTION.

- 33-9-10-3. Length of contract.
33-9-10-4. County council to appropriate funds.

33-9-10-1. Judges of courts of criminal jurisdiction authorized to contract for defense of indigents. — The judge of any court having criminal jurisdiction, except those counties with a population of four hundred thousand (400,000) or more, shall have the power to contract with any attorney-at-law or group of attorneys-at-law duly admitted to practice law in the state of Indiana to provide legal counsel for all or some of the poor persons coming before the court charged with the commission of a crime, and not having sufficient means to employ an attorney-at-law to defend themselves. [IC 33-9-10-1, as added by Acts 1971, P.L. 437, § 1; P.L. 12-1992, § 126.]

Compiler's Notes. According to the 1990 federal census, the counties with a population of 400,000 or more are Lake and Marion.
This chapter, insofar as it is inconsistent with Acts 1973, P.L. 308 (IC 33-5-29.5-1 et seq.) or with the superior court of Lake County and its jurisdiction, is specifically repealed by Acts 1973, P.L. 308, § 2; however,

since this chapter by its terms excludes Lake County, such repeal would have no effect.
Collateral References. Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 A.L.R.4th 874.
Right of indigent defendant in state criminal case to assistance of investigators. 81 A.L.R.4th 259.

33-9-10-2. Fee established by court. — The judge of such courts shall establish the fee to be paid to such attorney or attorneys-at-law for providing such service to such poor people. [IC 33-9-10-2, as added by Acts 1971, P.L. 437, § 1.]

33-9-10-3. Length of contract. — The contract contemplated in this chapter may be from year to year or for any length of time deemed proper by the judge. [IC 33-9-10-3, as added by Acts 1971, P.L. 437, § 1.]

33-9-10-4. County council to appropriate funds. — The county council of every county wherein the judge or judges of any court or courts having any criminal jurisdiction have contracted with an attorney or attorneys-at-law for legal services to the poor, shall appropriate an amount sufficient to meet the contract obligations of such court or courts for such services to the poor. [IC 33-9-10-4, as added by Acts 1971, P.L. 437, § 1.]

CHAPTER 11
PUBLIC DEFENDERS

SECTION.

- 33-9-11-1. Request for appointment.
33-9-11-2. Appointment.

SECTION.

- 33-9-11-3. Schedule of fees.
33-9-11-4. Disposition of fees.

SECTION.

33-9-11-5. Judicial orders to mandate payment of fees.

SECTION.

33-9-11-6. Public defender investigator.

33-9-11-1. Request for appointment. — Upon a determination by the judge of any court having criminal jurisdiction that the court is unable within a reasonable time to appoint an available attorney (public defender or otherwise), who is competent in the practice of law in criminal cases, as legal counsel for any person charged in such court with a criminal offense and not having sufficient means to employ an attorney, or upon a determination by such judge that in the interest of justice an attorney from another judicial circuit, not regularly practicing in such court, should be appointed to defend such indigent defendant or appeal his case, but such judge is unable within a reasonable time to provide for the direct appointment of such an attorney, such judge may make written request to the public defender of the state of Indiana to provide a qualified attorney for the defense of such indigent person, attaching to said written request a copy of the affidavit or indictment, and stating in said request the amount of the applicable minimum fee to be paid for the legal services of defense counsel in such case, subject to any additional amount reasonable under all the circumstances of the case, to be determined and approved by such judge upon the final determination thereof, and such reasonable partial allowances as may be approved and ordered by such judge pending such final determination. [IC 33-9-11-1, as added by Acts 1971, P.L. 438, § 1.]

Compiler's Notes. This chapter, insofar as it is inconsistent with Acts 1973, P.L. 308 (IC 33-5-29.5-1 et seq.) or with the superior court

of Lake County and its jurisdiction, is specifically repealed by Acts 1973, P.L. 308, § 2.

33-9-11-2. Appointment. — Upon receiving any such written request, the public defender of the state of Indiana shall have the duty and the power to accept appointment himself, to appoint any of his deputies, or to appoint any practicing attorney duly admitted to the practice of law before the Supreme Court of Indiana who is competent to practice law in criminal cases, subject to the concurring appointment, of record, by the requesting judge. [IC 33-9-11-2, as added by Acts 1971, P.L. 438, § 1.]

Compiler's Notes. This section, insofar as it is inconsistent with the law applicable to

Lake County is repealed. See compiler's note to IC 33-9-11-1.

33-9-11-3. Schedule of fees. — (a) The public defender of the state of Indiana shall prepare and maintain a schedule of minimum attorney fees for all general classifications of criminal trials, and proceedings on plea of "guilty", subject to the approval of the Supreme Court of Indiana, which schedule shall be furnished upon request to all courts having criminal jurisdiction, and no fee approved by any court for such services of the public defender of the state of Indiana, his deputy, or any attorney appointed by the said public defender and such judge pursuant to such request made to the said public defender, shall be less than the approved minimum fee provided in said schedule.

(b) In cases where there has been a change of venue, the presiding judge may not approve a fee for a public defender from the office of the public defender of the state of Indiana that exceeds one hundred twenty-five percent (125%) of the minimum fee schedule established under this chapter. [IC 33-9-11-3, as added by Acts 1971, P.L. 438, § 1; 1980, P.L. 192, § 1.]

Compiler's Notes. This section, insofar as it was inconsistent with the law applicable to Lake County, was repealed by Acts 1973, P.L. 308, § 2. See compiler's note to IC 33-9-11-1.

33-9-11-4. Disposition of fees. — All fees for services rendered by the public defender of the state of Indiana or any of his deputies pursuant to this chapter, shall be paid directly to the treasurer of the state of Indiana, to be expended for any necessary expenses of the office of such public defender, including expenses of salaries of the necessary deputies, in addition to the general funds of the state of Indiana otherwise appropriated by the General Assembly of the state of Indiana for the payment of such expenses. [IC 33-9-11-4, as added by Acts 1971, P.L. 438, § 1; 1981, P.L. 272, § 91.]

Compiler's Notes. This section, insofar as it was inconsistent with the law applicable to Lake County, was repealed by Acts 1973, P.L. 308, § 2. See compiler's note to IC 33-9-11-1.

33-9-11-5. Judicial orders to mandate payment of fees. — The judge of any court having criminal jurisdiction shall make all orders necessary to mandate payment of fees approved by the presiding judge for payment for legal services rendered for indigent defendants in any cause in such court, or in another court following change of venue from such court, whether or not such legal services are arranged under the provisions of this chapter or by direct appointment of counsel in the first instance by such judge. [IC 33-9-11-5, as added by Acts 1971, P.L. 438, § 1; 1981, P.L. 272, § 92.]

Compiler's Notes. This section, insofar as it was inconsistent with the law applicable to Lake County, was repealed by Acts 1973, P.L. 308, § 2. See compiler's note to IC 33-9-11-1.

33-9-11-6. Public defender investigator. — (a) A public defender may use a public defender investigator who is qualified under subsection (b) to assist the public defender in preparing for the criminal defense of indigent persons.

(b) To practice as a public defender investigator an individual must:

- (1) Be at least twenty-one (21) years of age; and
- (2) Not have a conviction for a crime that has a direct bearing on the individual's ability to competently perform the duties of a public defender investigator.

(c) A public defender investigator may not perform any duties for the public defender that constitute the unauthorized practice of law. [P.L.137-1989, § 6.]

Collateral References. Right of indigent defendant in state criminal case to assistance of investigators. 81 A.L.R.4th 259.

CHAPTER 11.5

SUPPLEMENTAL FUNDING FOR PUBLIC DEFENDER SERVICES

SECTION.

- 33-9-11.5-1. Supplemental public defender services fund established.
33-9-11.5-2. Appropriations from fund.
33-9-11.5-3. Use of fund.
33-9-11.5-4. No reversion to other funds.
33-9-11.5-5. Number of programs allowed.
33-9-11.5-6. Payment of costs.

SECTION.

- 33-9-11.5-7. Considerations before ordering costs paid.
33-9-11.5-8. Relief from payment.
33-9-11.5-9. Collection and deposit of fees.
33-9-11.5-10. Public defender in Lake County — Public defender services fund.

33-9-11.5-1. Supplemental public defender services fund established. — The supplemental public defender services fund is established in each county. The fund consists of amounts deposited under section 9 [IC 33-9-11.5-9] of this chapter. [P.L.167-1987, § 7; P.L.284-1989, § 1.]

33-9-11.5-2. Appropriations from fund. — The fiscal body of the county shall appropriate money from the fund to supplement and provide court appointed legal services to qualified defendants. [P.L.167-1987, § 7.]

33-9-11.5-3. Use of fund. — The supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services. [P.L.167-1987, § 7.]

33-9-11.5-4. No reversion to other funds. — Any money remaining in the fund at the end of the calendar year does not revert to any other fund but continues in the supplemental public defender services fund. [P.L.167-1987, § 7.]

33-9-11.5-5. Number of programs allowed. — A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county. [P.L.167-1987, § 7.]

33-9-11.5-6. Payment of costs. — (a) If at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 [IC 33-9-11.5-7] of this chapter, the court shall require payment by the person or the person's parent, if the person is a child alleged to be a delinquent child, of the following costs in addition to other costs assessed against the person:

- (1) Reasonable attorney's fees if an attorney has been appointed for the person by the court.
 - (2) Costs incurred by the county as a result of court appointed legal services rendered to the person.
- (b) The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 [IC 33-9-11.5-1] of this chapter.
- (c) A person ordered to pay any part of the costs of representation under subsection (a) has the same rights and protections as those of other

judgment debtors under the Constitution of the State of Indiana and under Indiana law.

(d) The sum of:

- (1) the fee collected under IC 35-33-7-6;
- (2) any amount assessed by the court under this section; and
- (3) any amount ordered to be paid under IC 33-19-2-3;

may not exceed the cost of defense services rendered to the person. [P.L.167-1987, § 7; P.L.284-1989, § 2; P.L.216-1996, § 1.]

NOTES TO DECISIONS

Appropriation from Commissary Account.

Prior to the defendant's sentencing and upon the state's motion, the trial court could appropriate funds from the defendant's commissary account with the sheriff's office as reimbursement to the taxpayers for providing

the defendant's defense, because this section authorizes a court, upon a finding of ability to pay the costs of representation, to require a defendant to pay attorney's fees for appointed counsel and costs incurred by the county as a result of court-appointed legal services. *Brown v. State*, 650 N.E.2d 304 (Ind. 1995).

33-9-11.5-7. Considerations before ordering costs paid. — (a) If a defendant or a child alleged to be a delinquent child is receiving publicly paid representation, the court shall consider:

- (1) The person's independently held assets and assets available to the spouse of the person or the person's parent if the person is unemancipated;
- (2) The person's income;
- (3) The person's liabilities; and
- (4) The extent of the burden that payment of costs assessed under section 6 [IC 33-9-11.5-6] of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the court determines that the person is able to pay the costs of representation, the court shall enter a finding that the person is able to pay those additional costs. [P.L.167-1987, § 7; P.L.284-1989, § 3.]

33-9-11.5-8. Relief from payment. — An order for costs assessed under section 6 [IC 33-9-11.5-6] of this chapter is a civil judgment subject to the exemptions allowed debtors under IC 34-55-10-2. At any time after entry of the order, the defendant may petition the court that has entered the order for relief from payment. The court may release the defendant from payment of all or a part of the payment required by the order if the court finds that payment would impose a hardship upon the defendant or dependents of the defendant. [P.L.167-1987, § 7; P.L.1-1998, § 181.]

33-9-11.5-9. Collection and deposit of fees. — Fees assessed under section 6 [IC 33-9-11.5-6] of this chapter shall be collected by the program providing court appointed legal services in the county. These fees shall be deposited in the supplemental public defender services fund established under section 1 [IC 33-9-11.5-1] of this chapter. [P.L.167-1987, § 7.]

33-9-11.5-10. Public defender in Lake County — Public defender services fund. — (a) In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided, a supplemental public defender services fund must be established in each city for providing funding for a public defender to represent indigent defendants in a city court.

(b) Sections 2 through 9 [IC 33-9-11.5-2 through IC 33-9-11.5-9] of this chapter apply to the locally established supplemental public defender services fund established under subsection (a). However, funds otherwise required to be delivered to the county fiscal officer for maintaining a supplemental public defender services fund under this chapter shall be deposited with the local fiscal officer. [P.L.18-1995, § 104.]

Compiler's Notes. According to the 1990 federal census, the county with a population of more than 400,000 but less than 700,000 is Lake.

CHAPTER 12

PUBLIC DEFENDER COUNCIL

SECTION.

33-9-12-1. Establishment — Membership.

33-9-12-2. Board of directors.

33-9-12-3. Executive director — Staff and clerical personnel.

SECTION.

33-9-12-4. Powers and duties.

33-9-12-1. Establishment — Membership. — There is established a public defender council of Indiana. Its membership consists of all public defenders, contractual pauper counsel, and other court appointed attorneys regularly appointed to represent indigent defendants. [IC 33-9-12-1, as added by Acts 1977, P.L. 321, § 1.]

33-9-12-2. Board of directors. — The activities of the council shall be directed by an eleven (11) member board of directors, ten (10) of whom shall be elected by the entire membership of the council. The public defender of Indiana shall also be a member of its board of directors. [IC 33-9-12-2, as added by Acts 1977, P.L. 321, § 1; 1980, P.L. 193, § 1.]

33-9-12-3. Executive director — Staff and clerical personnel. — The council may employ an executive director, staff, and clerical personnel as necessary to carry out its purposes. [IC 33-9-12-3, as added by Acts 1977, P.L. 321, § 1; 1980, P.L. 193, § 2.]

33-9-12-4. Powers and duties. — The council shall:

- (1) Assist in the coordination of the duties of the attorneys engaged in the defense of indigents at public expense;
- (2) Prepare manuals of procedure;
- (3) Assist in the preparation of trial briefs, forms, and instructions;
- (4) Conduct research and studies of interest or value to all such attorneys; and

(5) Maintain liaison contact with study commissions, organizations, and agencies of all branches of local, state, and federal government that will benefit criminal defense as part of the fair administration of justice in Indiana. [IC 33-9-12-4, as added by Acts 1977, P.L. 321, § 1; 1980, P.L. 193, § 3.]

CHAPTER 13

PUBLIC DEFENDER COMMISSION

SECTION.	SECTION.
33-9-13-1. Establishment of public defender commission — Appointment of members.	salary — Meeting times. 33-9-13-3. Duties.
33-9-13-2. Chairman — Terms — Reimbursement for expenses — Per diem	33-9-13-4. Division of court administration to provide general staff support.

33-9-13-1. Establishment of public defender commission — Appointment of members. — The Indiana public defender commission (referred to in this article as the commission) is established. The commission is composed of the following eleven (11) members, none of whom may be a law enforcement officer or a court employee:

- (1) Three (3) members appointed by the governor, with no more than two (2) of these individuals belonging to the same political party.
- (2) Three (3) members appointed by the chief justice of the supreme court, with no more than two (2) of these individuals belonging to the same political party.
- (3) One (1) member appointed by the board of trustees of the Indiana criminal justice institute, who is an attorney admitted to practice law in Indiana.
- (4) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be from the same political party.
- (5) Two (2) members of the senate, to be appointed by the speaker pro tempore of the senate. The members appointed under this subdivision may not be from the same political party. [P.L.284-1989, § 4; P.L.238-1993, § 1.]

33-9-13-2. Chairman — Terms — Reimbursement for expenses — Per diem salary — Meeting times. — (a) The members of the commission shall designate one (1) member of the commission as chairman.

(b) The term of office of each member of the commission is four (4) years. A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointments. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(c) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel

policies and procedures established by the department of administration and approved by the budget agency.

(d) A member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is, however, entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(e) The members of the commission shall meet at least quarterly and at times called by the chairman or at the request of three (3) commission members. [P.L.284-1989, § 4.]

Res Gestae. Criminal justice notes, 37 Res Gestae 586 (1994).

33-9-13-3. Duties. — (a) The commission shall do the following:

(1) Make recommendations to the supreme court of Indiana concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

(A) Determining indigency and eligibility for legal representation.

(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-9-14, including but not limited to the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-9-11.5.

(C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-9-11.5.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund. [P.L.284-1989, § 4; P.L.238-1993, § 2.]

Compiler's Notes. This section as amended by P.L.238-1993, § 2, contains a subsection (a) designation, but no subsection (b) designation.

Res Gestae. Criminal justice notes, 37 Res Gestae 586 (1994).

33-9-13-4. Division of court administration to provide general staff support. — The division of state court administration of the supreme court of Indiana shall provide general staff support to the commission. The division of state court administration may enter into contracts for any additional staff support that the division determines is necessary to implement this section. [P.L.284-1989, § 4.]

CHAPTER 14
PUBLIC DEFENSE FUND

SECTION.

- 33-9-14-1. Establishment of fund.
- 33-9-14-2. Investment of funds by treasurer.
- 33-9-14-3. Nonreversion of funds to general fund.
- 33-9-14-4. Request by county auditor for reimbursement for indigent defense services.
- 33-9-14-5. State court administrator to compute reimbursement — Certi-

SECTION.

- fication of reimbursement to auditor — Warrant to treasurer for disbursement of reimbursed amount.
- 33-9-14-6. Suspension of reimbursement — Proration of suspended reimbursement.

33-9-14-1. Establishment of fund. — The public defense fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court of Indiana. [P.L.284-1989, § 5.]

33-9-14-2. Investment of funds by treasurer. — The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. [P.L.284-1989, § 5.]

33-9-14-3. Nonreversion of funds to general fund. — Money in the fund at the end of a fiscal year does not revert to the state general fund. [P.L.284-1989, § 5.]

33-9-14-4. Request by county auditor for reimbursement for indigent defense services. — (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

(c) A request under this section from a county described in IC 33-9-15-1(3) may be limited to expenditures for indigent defense services provided by a particular division of a court. [P.L.284-1989, § 5; P.L.238-1993, § 3; P.L.202-1997, § 4; P.L.36-1998, § 1.]

33-9-14-5. State court administrator to compute reimbursement — Certification of reimbursement to auditor — Warrant to treasurer for disbursement of reimbursed amount. — (a) Except as provided under section 6 [IC 33-9-14-6] of this chapter, upon certification by a county auditor and a determination by the public defender commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county that is equal to fifty percent (50%) of the county's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9, and that is equal to forty percent (40%) of the county's certified expenditures for defense services provided in non-capital cases except misdemeanors. The state court administrator shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the state court administrator, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified. [P.L.284-1989, § 5; P.L.238-1993, § 4; P.L.202-1997, § 5.]

Res Gestae. Criminal justice notes, 37 Res Gestae 586 (1994).

33-9-14-6. Suspension of reimbursement — Proration of suspended reimbursement. — If the public defense fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all county reimbursement for net expenditures in non-capital cases that is certified by the state court administrator in any quarter, the commission shall suspend payment of reimbursement to counties in non-capital cases until the next semi-annual deposit in the public defense fund. At the end of the suspension period, the state court administrator shall certify all suspended reimbursement. If the public defense fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all suspended reimbursement in non-capital cases, the amount certified by the state court administrator for each county entitled to reimbursement shall be prorated. [P.L.284-1989, § 5; P.L.238-1993, § 5.]

CHAPTER 15

COUNTY PUBLIC DEFENDER BOARDS

SECTION.

- 33-9-15-1. Applicability of chapter.
- 33-9-15-2. "Board" defined.
- 33-9-15-3. Public defender board established by ordinance.
- 33-9-15-4. Traveling and other expenses.

SECTION.

- 33-9-15-5. Preparation of comprehensive plan.
- 33-9-15-6. Duties of board — Term of appointment of county public defender.

SECTION.

- 33-9-15-7. Duties of county public defender.
- 33-9-15-8. Private contracts.
- 33-9-15-9. Assigned counsel system.
- 33-9-15-10. Power of court to appoint defense counsel.

SECTION.

- 33-9-15-10.5. County public defender board — Request for reimbursement.
- 33-9-15-11. Prosecutors and defenders at same law firm prohibited.

33-9-15-1. Applicability of chapter. — This chapter does not apply to a county that:

- (1) contains a consolidated city;
- (2) has a population of:
 - (A) more than three hundred thousand (300,000) but less than four hundred thousand (400,000);
 - (B) more than two hundred thousand (200,000) but less than three hundred thousand (300,000); or
 - (C) more than one hundred sixty thousand (160,000) but less than two hundred thousand (200,000); or
- (3) has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), except as provided in sections 5 and 10.5 [IC 33-9-15-5 and 33-9-15-10.5] of this chapter. [P.L.209-1991, § 1; P.L.12-1992, § 127; P.L.36-1998, § 2.]

Compiler's Notes. According to the 1990 federal census, IC 36-3-1, and IC 36-4-1-1, the county containing the consolidated city is Marion.

According to the 1990 federal census, the county having a population of more than 300,000 but less than 400,000 is Allen. The

county having a population of more than 200,000 but less than 300,000 is St. Joseph. The county having a population of more than 160,000 but less than 200,000 is Vanderburgh.

According to the 1990 federal census, the county referred to in subdivision (3) is Lake.

33-9-15-2. "Board" defined. — As used in this chapter, "board" refers to a board established in an ordinance under section 3 [IC 33-9-15-3] of this chapter. [P.L.209-1991, § 1.]

33-9-15-3. Public defender board established by ordinance. —

(a) A county executive may adopt an ordinance establishing a county public defender board consisting of three (3) members. The county executive shall appoint one (1) member. The judges who exercise felony or juvenile jurisdiction in the county shall appoint by majority vote the other two (2) members.

(b) The members appointed by the judges may not be from the same political party. The members must be persons who have demonstrated an interest in high quality legal representation for indigent persons. However, a member may not be a city, town, or county attorney, a law enforcement officer, a judge, or a court employee.

(c) Each member of the board serves a three (3) year term beginning with the date of the member's appointment. A member appointed to fill a vacancy holds office for the remainder of the previous member's term. If a successor has not been appointed by the end of a member's three (3) year term, the member continues in office until the member's successor takes office.

(d) The members shall, by a majority vote, elect one (1) member to serve as chairman.

(e) Meetings shall be held at least quarterly and may be held at other times during the year at the call of the:

- (1) Chairman; or
- (2) Other two (2) members.

(f) A county executive may terminate the board by giving at least ninety (90) days written notice to the judges described in subsection (a). [P.L.209-1991, § 1.]

NOTES TO DECISIONS

Employment Decisions.

Failure of county to form public defender board did not prove county delegated authority to hire and fire public defenders to senior

judge, or that county was liable for a judge's firing of public defenders. *Larson v. Cantrell*, 974 F. Supp. 1211 (N.D. Ind. 1997).

33-9-15-4. Traveling and other expenses. — A member is entitled to reimbursement from the county for traveling expenses and other expenses actually incurred in connection with the member's duties to the same extent as is provided to a state employee for traveling expenses and other expenses under the state travel policies and procedures established by the department of administration and approved by the budget agency. [P.L.209-1991, § 1.]

33-9-15-5. Preparation of comprehensive plan. — (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Utilizing an assigned counsel system of panel attorneys for case-by-case appointments under section 9 [IC 33-9-15-9] of this chapter.
- (4) In a county described in section 1(3) [IC 33-9-15-1(3)] of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the commission. [P.L.209-1991, § 1; P.L.238-1993, § 6; P.L.36-1998, § 3.]

33-9-15-6. Duties of board — Term of appointment of county public defender. — (a) If a county public defender's office is established under this chapter, the board shall do the following:

- (1) Recommend to the county fiscal body an annual operating budget for the county public defender's office.
- (2) Appoint a county public defender.
- (3) Submit an annual report to the county executive, the county fiscal body, and the judges described in section 3 [IC 33-9-15-3] of this chapter regarding the operation of the county public defender's office including information relating to caseloads and expenditures.

(b) A county public defender shall be appointed for a term not to exceed four (4) years and may be reappointed. The county public defender may be removed from office only upon a showing of good cause. An attorney must be

admitted to the practice of law in Indiana for at least two (2) years before the attorney is eligible for appointment as a county public defender. [P.L.209-1991, § 1.]

33-9-15-7. Duties of county public defender. — A county public defender shall do the following:

- (1) Maintain an office as approved by the board.
- (2) Hire and supervise staff necessary to perform the services of the office after the staff positions are recommended by the board and approved by the county executive and the fiscal body.
- (3) Keep and maintain records of all cases handled by the office and report at least annually to the board and the commission concerning the operation of the office, costs, and projected needs. [P.L.209-1991, § 1; P.L.238-1993, § 7.]

33-9-15-8. Private contracts. — (a) A county public defender may contract with an attorney, a group of attorneys, or a private organization to provide legal representation under this chapter.

(b) The board shall establish the provisions of the contract under this section.

(c) The county fiscal body shall appropriate an amount sufficient to meet the obligations of the contract. [P.L.209-1991, § 1.]

33-9-15-9. Assigned counsel system. — The board may establish an assigned counsel system of panel attorneys to provide legal representation under this chapter that shall operate as follows:

- (1) The board shall gather and maintain a list of attorneys qualified to represent indigent defendants.
- (2) Upon the determination by a court that a person is indigent and entitled to legal representation at public expense, the court shall appoint an attorney to provide the representation from the list maintained by the board.
- (3) An attorney appointed to provide representation under this section may request authorization from the judge hearing the case for expenditures for investigative services, expert witnesses, or other services necessary to provide adequate legal representation.
- (4) An attorney appointed to provide representation under this section is entitled to receive compensation and reimbursement for budgeted expenses by submitting a voucher to the court. Upon approval of the voucher by the appropriate judge, the voucher shall be presented to the county auditor who shall process the claim as other claims against county funds are processed.
- (5) An attorney appointed to provide representation under this section shall, upon completion of representation, report to the board information regarding the case disposition. [P.L.209-1991, § 1.]

33-9-15-10. Power of court to appoint defense counsel. — (a) This chapter does not prevent a court from appointing counsel other than counsel

provided for under the board's plan for providing defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for defense services not provided under the county public defender board's plan are not subject to reimbursement from the public defense fund under IC 33-9-14.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge determines:

(1) That an attorney provided under the county public defender board's plan is not qualified or available to represent the person; or

(2) That in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the public defense fund. [P.L.209-1991, § 1; P.L.238-1993, § 8.]

33-9-15-10.5. County public defender board — Request for reimbursement. — (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent defense services to the county auditor and may be limited in a county described in section 1(3) [IC 33-9-15-1(3)] of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the public defender commission.

(b) Upon certification by the public defender commission that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the public defender commission, the commission shall notify the county public defender board and the county fiscal body of the failure to comply with the commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year. [P.L.238-1993, § 9; P.L.202-1997, § 6; P.L.36-1998, § 4.]

33-9-15-11. Prosecutors and defenders at same law firm prohibited. — A county public defender, a contract attorney, or counsel appointed by the court to provide legal defense services to indigent persons may not be

a partner or employee at the same law firm that employs the county's prosecuting attorney or a deputy prosecuting attorney in a private capacity. [P.L.209-1991, § 1.]

ARTICLE 10

CITY AND TOWN COURTS

33-10-1-1 — 33-10-1-11. [Repealed.]

Compiler's Notes. This article, concerning city and town courts, was repealed by Acts 1978, P.L. 2, §§ 3308, 3310; Acts 1980, P.L. 8, § 164; and P.L.1-1993, § 230, effective May 4, 1993. For present similar provisions, see IC 33-10.1-1-3 et seq.

ARTICLE 10.1

CITY AND TOWN COURTS

CHAPTER.

1. GENERAL PROVISIONS, 33-10.1-1-1 — 33-10.1-1-4.
2. POWERS OF JUDGE AND JURISDICTION, 33-10.1-2-1 — 33-10.1-2-8.1.
3. SELECTION OF JUDGES, 33-10.1-3-1 — 33-10.1-3-3.

CHAPTER.

4. SESSIONS OF COURT AND COMPENSATION OF JUDGES, 33-10.1-4-1 — 33-10.1-4-3.
5. RECORDS, PROCEDURES, AND PRACTICE, 33-10.1-5-1 — 33-10.1-5-10.
6. PERSONNEL, EXPENSES, AND COSTS, 33-10.1-6-1 — 33-10.1-6-13.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 33-10.1-1-3. Establishment of certain city or town courts — Ordinance — Election — Notice to office of judicial administration.
- 33-10.1-1-4. Election of judge — Towns

adopting ordinance under IC 3-10-6-2.6 and later adopting ordinance under IC 33-10.1-1-3.

33-10.1-1-1, 33-10.1-1-2. [Repealed.]

Compiler's Notes. These sections, Acts 1980, P.L. 8, § 162, concerning applicability of this article and giving of notice by a city or town of continuation of its court to the office of judicial administration, were repealed by Acts 1981, P.L. 282, § 8.

33-10.1-1-3. Establishment of certain city or town courts — Ordinance — Election — Notice to office of judicial administration. —

(a) During 1986, and during every fourth year after 1986, a second or third class city or a town may by ordinance establish or abolish a city or town court. An ordinance to establish a city or town court must be adopted not less than one (1) year before the judge's term would begin under IC 33-10.1-3-1.1.

(b) The judge for a court established under subsection (a) shall be elected under IC 3-10-6 or IC 3-10-7 at the municipal election in November 1987 and every four (4) years thereafter.

(c) A court established under subsection (a) shall come into existence on January 1 of the year following the year in which a judge is elected to serve in that court.

(d) A city or town court in existence on January 1, 1986, may continue in operation until it is abolished by ordinance.

(e) A city or town that establishes or abolishes a court under this section shall give notice of its action to the division of state court administration of the office of judicial administration under IC 33-2.1-7. [IC 33-10.1-1-3, as added by Acts 1981, P.L.282, § 1; 1982, P.L.33, § 13; P.L.16-1983, § 20; P.L.5-1986, § 21; P.L.392-1987(ss), § 23; P.L.176-1988, § 41.]

Effective Dates. P.L.392-1987(ss), § 45. January 1, 1988.

Indiana Law Journal. City and Town Courts: Mapping Their Dimensions, 67 Ind. L.J. 59 (1991).

Cited: Gary City Court v. City of Gary, 489 N.E.2d 511 (Ind. 1986).

NOTES TO DECISIONS

Abolishment of Office.

A city had a right to repeal an ordinance which created the office of city judge, thereby abolishing such office and no constitutional,

property, or contract right of the person holding such office was violated thereby. *Corn v. City of Oakland City*, 415 N.E.2d 129 (Ind. App. 1981).

33-10.1-1-4. Election of judge — Towns adopting ordinance under IC 3-10-6-2.6 and later adopting ordinance under IC 33-10.1-1-3. —

(a) This section applies to a town that:

(1) Adopts an ordinance under IC 3-10-6-2.6; and

(2) Subsequently adopts an ordinance to establish a town court under section 3 [IC 33-10.1-1-3] of this chapter.

(b) Notwithstanding section 3 of this chapter, the judge of the town court shall be elected at the next municipal election not conducted in a general election year. The successors of the judge shall be elected at the first general election following the municipal election and every four (4) years thereafter. [P.L.11-1988, § 10.]

CHAPTER 2

POWERS OF JUDGE AND JURISDICTION

SECTION.

33-10.1-2-1. Powers of judge — Appointment of attorney to preside during temporary absence of judge.

33-10.1-2-2. Jurisdiction over crimes, infractions, and ordinance violations.

33-10.1-2-3. [Repealed.]

33-10.1-2-3.1. City courts — Concurrent jurisdiction with circuit court — Exceptions.

33-10.1-2-4. City or town court of cities in Lake County — Concurrent civil jurisdiction with circuit court of county — Exceptions.

33-10.1-2-5. City court in city of third class

SECTION.

not a county seat — Concurrent jurisdiction with circuit court — Exceptions — Effect of judgments.

33-10.1-2-6. Manner of determination of jurisdiction over title to land — Certification to circuit or other proper court.

33-10.1-2-7. Exclusive jurisdiction of town court over all violations of town ordinances — Jurisdiction of town court of misdemeanors and infractions.

33-10.1-2-8. [Repealed.]

33-10.1-2-8.1. Seal for town or city court.

33-10.1-2-1. Powers of judge — Appointment of attorney to preside during temporary absence of judge. — (a) A judge of a city or town court may adopt rules for conducting the business of the court and has all powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, the enforcement of its orders, and the issuing of commissions for taking depositions in cases pending in the court. The judge may administer oaths and give all necessary certificates for the authentication of the records and proceedings of the court.

(b) If the judge is temporarily absent or unable to act, he shall appoint a reputable practicing attorney to preside in his absence. The special judge has all the powers and rights and shall perform all the duties of the judge of the court as fully as the regular judge appointing him. [IC 33-10.1-2-1, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-2-2. Jurisdiction over crimes, infractions, and ordinance violations. — A city court has the following jurisdiction over crimes, infractions, and ordinance violations:

(1) Jurisdiction of all violations of the ordinances of the city.

(2) Jurisdiction of all misdemeanors and all infractions.

[IC 33-10.1-2-2, as added by Acts 1980, P.L. 8, § 162; P.L.3-1989, § 201.]

NOTES TO DECISIONS

Misdemeanors.

City court has county-wide misdemeanor jurisdiction. *Mareska v. State*, 534 N.E.2d 246 (Ind. App. 1989).

Although a city court had statutory jurisdiction to hear a case involving a prosecution

for disorderly conduct occurring outside the city limits, the jury panel, which excluded jurors from the area where the alleged crime occurred, contravened the requirements of the sixth amendment. *Mareska v. State*, 534 N.E.2d 246 (Ind. App. 1989).

33-10.1-2-3. [Repealed.]

Compiler's Notes. This section, concerning second, third, and fourth-class city courts,

was repealed by Acts 1981, P.L. 44, § 61. For present law, see IC 33-10.1-2-3.1.

33-10.1-2-3.1. City courts — Concurrent jurisdiction with circuit court — Exceptions. — A city court has concurrent jurisdiction with the circuit court in civil cases where the amount in controversy does not exceed five hundred dollars (\$500). However, the city court does not have jurisdiction in actions for slander, libel, foreclosure of mortgage on real estate, where the title to real estate is in issue, matters relating to a decedent's estate, appointment of guardians and all related matters, and actions in equity. [IC 33-10.1-2-3.1, as added by Acts 1981, P.L. 44, § 31.]

33-10.1-2-4. City or town court of cities in Lake County — Concurrent civil jurisdiction with circuit court of county — Exceptions. — The city court of each of the four (4) cities having the largest populations and the town court of the town having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) have concurrent civil jurisdiction with the circuit court of the county where the amount in controversy does not

exceed three thousand dollars (\$3,000). The court has jurisdiction in any action where the parties or the subject matter are in the county in which the city or town is located. However, the city or town court does not have jurisdiction in:

- (1) actions for slander or libel;
- (2) matters relating to decedents' estates, appointment of guardians, and all related matters;
- (3) dissolution of marriage actions; or
- (4) injunction or mandate actions.

[IC 33-10.1-2-4, as added by Acts 1980, P.L. 8, § 162; P.L.334-1989(ss), § 28; P.L.12-1992, § 128; P.L.215-1996, § 3; P.L.12-1997, § 2.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than 700,000 is Lake, and the three cities having

the largest populations in Lake County are East Chicago, Gary, and Hammond.

Cited: Gary City Court v. City of Gary, 489 N.E.2d 511 (Ind. 1986).

33-10.1-2-5. City court in city of third class not a county seat — Concurrent jurisdiction with circuit court — Exceptions — Effect of judgments. — A city court in a third class city that is not a county seat and to which section 4 [IC 33-10.1-2-4] of this chapter does not apply has concurrent jurisdiction with the circuit court in civil cases where the amount in controversy does not exceed three thousand dollars (\$3,000). However, the city court does not have jurisdiction in actions for slander, libel, foreclosure of mortgages on real estate, where the title to real estate is in issue, all matters relating to a decedent's estate, appointment of guardians and all related matters, and actions in equity, nor does the court have original jurisdiction where the principal defendant resides within another city having a city court with a civil jurisdiction. Judgments rendered in the city court, when a certified transcript is filed with the clerk of the circuit court, have the same force as judgments rendered in the circuit court. [IC 33-10.1-2-5, as added by Acts 1980, P.L. 8, § 162; 1981, P.L. 44, § 32; P.L.215-1996, § 4.]

33-10.1-2-6. Manner of determination of jurisdiction over title to land — Certification to circuit or other proper court. — If in a proceeding in a city court the title to land is put in issue by plea supported by affidavit, or manifestly appears from the proof on trial to be in issue, the court shall, without further proceeding, certify the cause and papers to the circuit or other court having jurisdiction in the county where the cause is being tried. However, if the title to land is put in issue by affidavit or verified pleading, the court shall at once hear and determine whether title is in issue, and, if the proof supports the issue, then the cause shall be certified for final determination, including the issue of title. [IC 33-10.1-2-6, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-2-7. Exclusive jurisdiction of town court over all violations of town ordinances — Jurisdiction of town court of misdemeanors and infractions. — (a) A town court has exclusive jurisdiction of all violations of the ordinances of the town.

(b) A town court also has jurisdiction of all misdemeanors and all infractions. [IC 33-10.1-2-7, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-2-8. [Repealed.]

Compiler's Notes. This section, concerning seals for town or city courts in cities of the second, third, or fourth class, was repealed by

Acts 1981, P.L. 44, § 61. For present law, see IC 33-10.1-2-8.1.

33-10.1-2-8.1. Seal for town or city court. — The town court judge or city court judge shall provide, at the expense of the town or city, a seal for the court that must contain on the face the words: “(Town or City) Court of _____, Indiana.” A description of the seal, together with an impress of it, shall be put on the records of the court. [IC 33-10.1-2-8.1, as added by Acts 1981, P.L. 44, § 33.]

CHAPTER 3

SELECTION OF JUDGES

SECTION.

33-10.1-3-1. [Repealed.]

33-10.1-3-1.1. Election of city and town court judges — Bond.

SECTION.

33-10.1-3-2. City court judge in city of the second class — Eligibility.

33-10.1-3-3. Oath of office — Bond.

33-10.1-3-1. [Repealed.]

Compiler's Notes. This section, concerning the election and bond of city court judge,

was repealed by Acts 1981, P.L. 47, § 26. For present law, see IC 33-10.1-3-1.1.

33-10.1-3-1.1. Election of city and town court judges — Bond. —

(a) The judge of a city or town court shall be elected under IC 3-10-6 or IC 3-10-7 by the voters of the city or town.

(b) Except as provided in subsections (c) and (d), the term of office of a judge elected under this section is four (4) years, beginning at noon January 1 after election and continuing until a successor is elected and qualified.

(c) This subsection applies to a town that adopts an ordinance under IC 3-10-6-2.6. The term of office of:

(1) a judge elected at the next municipal election not conducted in a general election year is one (1) year; and

(2) the successors to the judge described in subdivision (1) is four (4) years;

beginning at noon January 1 after election and continuing until a successor is elected and qualified.

(d) This subsection applies to a town that adopts an ordinance under IC 3-10-7-2.7. The term of office of:

(1) a judge elected at the next municipal election not conducted in a general election year is three (3) years; and

(2) the successors to the judge described in subdivision (1) is four (4) years;

beginning noon January 1 after election and continuing until a successor is elected and qualified.

(e) Before beginning the duties of office, the judge shall, in the manner prescribed by IC 5-4-1, execute a bond conditioned upon the faithful discharge of the duties of office. [IC 3-10.1-3-1.1, as added by Acts 1981, P.L. 47, § 20; P.L.5-1986, § 22; P.L.11-1988, § 11; P.L.4-1996, § 102; P.L.2-1997, § 70.]

33-10.1-3-2. City court judge in city of the second class — Eligibility. — To be eligible to hold the office of city court judge, as provided by Article 6, Section 6, of the Constitution of the State of Indiana, the judge must be a resident of the city during the term of office or the office becomes vacant. [IC 33-10.1-3-2, as added by Acts 1980, P.L. 8, § 162; P.L.3-1987, § 537; P.L.5-1988, § 169.]

33-10.1-3-3. Oath of office — Bond. — Before beginning the duties of office, the judge of a town court shall take and subscribe to the same oath of office as judges of circuit courts. The judge shall also execute a bond payable to the town in the penal sum of five thousand dollars (\$5,000), conditioned upon the faithful performance of the duties of the judge's office with good and sufficient surety. The bond must be approved by the legislative body of the town and filed in the office of the town clerk-treasurer. [IC 33-10.1-3-3, as added by Acts 1980, P.L. 8, § 162; P.L.8-1989, § 89.]

CHAPTER 4

SESSIONS OF COURT AND COMPENSATION OF JUDGES

SECTION.

33-10.1-4-1. Sessions of court — Location.

33-10.1-4-2. Judges — Compensation.

33-10.1-4-3. Prohibition of city court judge

from aiding any applicant for
any liquor license — Violation.

33-10.1-4-1. Sessions of court — Location. — (a) A city court judge shall hold regular sessions of the city court at a place to be provided and designated by the legislative body of the city.

(b) A town court judge shall hold sessions of the town court as the business of the court demands at a place to be provided and designated by the legislative body of the town. [IC 33-10.1-4-1, as added by Acts 1980, P.L. 8, § 162; P.L.8-1989, § 90.]

33-10.1-4-2. Judges — Compensation. — (a) Special judges of a city court are entitled to the compensation allowed special judges in the circuit court, to be paid out of the city treasury on the certificate of the regular judge and the warrant of the city controller or clerk-treasurer.

(b) A city court judge may not receive any fees or compensation other than the judge's salary, as established under subsection (e).

(c) A city court judge of each of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is entitled to receive for additional services that this article requires to be

performed three thousand five hundred dollars (\$3,500) per year in addition to the salary otherwise provided. The fiscal body of the city shall appropriate the money necessary to pay the additional compensation.

(d) A town court judge is entitled to receive the compensation that is prescribed by the fiscal body of the town.

(e) A city court judge is entitled to receive compensation that is prescribed by the fiscal body of the city. [IC 33-10.1-4-2, as added by Acts 1980, P.L. 8, § 162; 1981, P.L. 282, § 5; P.L.8-1989, § 91; P.L.12-1992, § 129.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than

700,000 is Lake, and the three cities having the largest populations in Lake County are East Chicago, Gary, and Hammond.

33-10.1-4-3. Prohibition of city court judge from aiding any applicant for any liquor license — Violation. — A city court judge may not act as attorney, agent, or counsel for the applicant in a proceeding to procure a license to retail or wholesale intoxicating liquors under IC 7.1 or aid or assist in any manner in the procuring of such a license. A person who recklessly violates this section commits a Class B misdemeanor. [IC 33-10.1-4-3, as added by Acts 1980, P.L. 8, § 162.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, and IC 35-50-5-2.

CHAPTER 5

RECORDS, PROCEDURES, AND PRACTICE

SECTION.

33-10.1-5-1. Circuit court practice rules to govern city courts.

33-10.1-5-2. Change of venue.

33-10.1-5-3. Issuance of warrants or other processes by city court — Procedure.

33-10.1-5-4. City courts of East Chicago, Gary, and Hammond — Books of record concerning civil court matters — Contents.

33-10.1-5-5. Issues of fact — Trial by judge or jury.

33-10.1-5-6. Style of city or town court.

SECTION.

33-10.1-5-7. City court not a court of record — Exception — Town court not a court of record.

33-10.1-5-8. Effect of orders of city or town courts — Judgment as lien on real estate — Issuance of orders of sale and executions affecting real estate.

33-10.1-5-9. Appeal from city court and town court — Appeal by prisoner.

33-10.1-5-10. Appeal in civil action — Bond — Change of venue.

33-10.1-5-1. Circuit court practice rules to govern city courts. — City courts are governed by the laws and rules governing the practice, pleading, and processes in circuit courts. [IC 33-10.1-5-1, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-5-2. Change of venue. — A change of venue may not be taken from a city or town court, but any defendant may take a change of venue from the judge of the court, with a special judge appointed as provided for the circuit court. [IC 33-10.1-5-2, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-5-3. Issuance of warrants or other processes by city court — Procedure. — All warrants or other processes issued by the city court shall be directed to the chief of police of the city or any person specially deputized by the city court and shall be executed, served, and returned by the chief, by any police officer of the city, or by the specially deputized person. The members of the police force of the city shall cause all persons arrested by them for a violation of any law to be taken before the city court for trial or examination. [IC 33-10.1-5-3, as added by Acts 1980, P.L. 8, § 162.]

NOTES TO DECISIONS

Service of Process.

Reading this section, which directs all processes of a city court to the chief of police, with the words of limitation contained in IC 36-8-3-6, which limits the duty of the police to serve the process within the municipality, together, it appears that the police officers of

the municipality — or a specially appointed bailiff — are to serve all process within the municipal city limits and the sheriff is authorized to serve the process outside of the city limits. *City of Wabash v. Wabash County Sheriff's Dep't*, 562 N.E.2d 1299 (Ind. App. 1990).

33-10.1-5-4. City courts of East Chicago, Gary, and Hammond — Books of record concerning civil court matters — Contents. — (a) City courts of the three (3) cities having the largest populations in counties having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall keep the following books of record on the civil side of the court:

- (1) A loose-leaf minute book, similar to that kept by the circuit court, each case to be numbered consecutively in order of its filing.
- (2) Index and cross-index book, containing the names of all parties to each action with the number of the case opposite the name.
- (3) A fee book as is provided for city courts.
- (4) An order book in which all orders of a cause shall be written consecutively when final judgment or order is entered.

(b) The cause should bear the same number as originally given the case when filed and shall be arranged in the order book consecutively according to the original number given the case when filed. All orders, proceedings, records of issuing execution, returns of execution, and satisfactions of execution shall be grouped together, if practical, on one (1) page or consecutive pages where there is not sufficient room to group it on one (1) page. All costs in a cause shall be taxed on the margin of the page containing the final order or judgment. All orders not connected with a specific case, such as general appointments made by the judge, shall be entered in the minute book under a separate number and recorded in the record book under that number. [IC 33-10.1-5-4, as added by Acts 1980, P.L. 8, § 162; P.L.12-1992, § 130.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than

700,000 is Lake, and the three cities with the largest populations in Lake County are East Chicago, Gary, and Hammond.

33-10.1-5-5. Issues of fact — Trial by judge or jury. — All issues of fact pending in city courts shall be tried by the judge, unless either party demands a jury trial. The jury must consist of six (6) qualified voters of the city, to be summoned by the bailiff by venire issued by the judge. [IC 33-10.1-5-5, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-5-6. Style of city or town court. — The style of the city or town court is "The (City or Town) Court of _____," according to the name of the city or town. [IC 33-10.1-5-6, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-5-7. City court not a court of record — Exception — Town court not a court of record. — (a) A city court is not a court of record.

(b) A town court is not a court of record.

(c) A person selected as judge of the following courts must be an attorney in good standing under the requirements of the supreme court:

- (1) Anderson city court.
- (2) Brownsburg town court.
- (3) Carmel city court.
- (4) A city or town court located in Lake County.
- (5) Muncie city court.
- (6) Noblesville city court.
- (7) Plainfield town court.

[IC 33-10.1-5-7, as added by Acts 1980, P.L. 8, § 162; 1981, P.L. 282, § 6; P.L.40-1990, § 46; P.L.133-1992, § 58; P.L.18-1995, § 105; P.L.12-1997, § 3.]

33-10.1-5-8. Effect of orders of city or town courts — Judgment as lien on real estate — Issuance of orders of sale and executions affecting real estate. — (a) All judgments, decrees, orders, and proceedings of city and town courts have the same force as those of the circuit court. A judgment becomes a lien on real estate when a transcript of the judgment is filed with the clerk of the circuit court.

(b) All orders of sale and executions affecting real estate from the city court of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall be issued by the clerk of the circuit court to the sheriff upon the filing of a certified copy of the judgment. When the copy is filed, the court rendering the judgment has no further jurisdiction of the case except to furnish a transcript for appeal. The life of a lien may be continued in force when the action is started in the city court, as though the action were filed in the circuit court, by filing with the clerk of the circuit court a certificate, certified to by the judge of the city court and containing the names of the parties to the suit, the nature of the action, the description of the property affected, and the amount in controversy. The judge shall enter minutes on the docket showing the issuing of the certificates. [IC 33-10.1-5-8, as added by Acts 1980, P.L. 8, § 162; P.L.12-1992, § 131.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than

700,000 is Lake, and the three cities with the largest populations in Lake County are East Chicago, Gary, and Hammond.

33-10.1-5-9. Appeal from city court and town court — Appeal by prisoner. — (a) An appeal from a judgment of a city court may be taken to the circuit or superior court of the county and tried de novo.

(b) An appeal from a judgment of a town court may be taken to the superior or circuit court of the county within thirty (30) days from the rendition of the judgment.

(c) A prisoner against whom punishment is adjudged by a city court may appeal to the circuit court of the county, within thirty (30) days after the judgment. If the prisoner, within the thirty (30) days, enters into recognizance for his appearance in court and causes to be filed in the court, within forty-five (45) days, all other papers, documents, and transcripts necessary to complete his appeal, then the appeal stays all further proceedings on the judgment in the court below. However, the prisoner may remain in jail on his sentence instead of furnishing a recognizance and an appeal without recognizance does not stay the execution of the court below. [IC 33-10.1-5-9, as added by Acts 1980, P.L. 8, § 162.]

Cited: Gary City Court v. City of Gary, 489 N.E.2d 511 (Ind. 1986); Tyson v. State, 593 N.E.2d 175 (Ind. 1992).

NOTES TO DECISIONS

ANALYSIS

Filing of papers with circuit court.

—Responsibility of city court.

Motion for discharge.

Filing of Papers with Circuit Court.

—Responsibility of City Court.

The defendants, by filing their notices of appeal and appeal bonds well within 30 days of the judgments finding them guilty of an offense, complied with the statutory mandate to cause the necessary papers, documents, and transcripts to be filed. The responsibility

for the preparation and filing of the necessary papers with the circuit court then fell upon the city court judge. *Straley v. Faulkner*, 482 N.E.2d 471 (Ind. App. 1985).

Motion for Discharge.

Since a trial in superior court on appeal from city court is de novo, defendant could file a motion for discharge in superior court on ground trial was not held within time provided in Rule C.R. 4(C) although defendant made no objection to such delay in city court. *State v. Rehborg*, 72 Ind. Dec. 598, 396 N.E.2d 953 (Ind. App. 1979) (decided under former law).

33-10.1-5-10. Appeal in civil action — Bond — Change of venue. —

(a) A party in a civil action who desires to take an appeal from the city court of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall file a bond, to the approval of the city court, within thirty (30) days from the date of rendition of final judgment, and the motion to correct errors within ten (10) days after the rendition of final judgment. The transcript and motion shall be filed in the court to which the appeal is taken within thirty (30) days after the motion has been signed by the court.

(b) All errors saved shall be reviewed as far as justice warrants, and for that purpose, a complete transcript of all the evidence is not required. An error occurring during the trial, not excepted to at the time, may be made available upon appeal by setting it forth in a motion for a new trial. Upon application within the time fixed, either of the parties to the suit may obtain either a correct statement, to be prepared by the party requesting the signing of the same, of the facts in a narrative form appearing upon the trial and of all questions of law involved in the case and the decisions of the court upon the questions of law, or a correct stenographic report, and the expense of procuring the same shall be paid by the party requesting the same.

(c) The appeal shall be submitted upon the date filed in the court to which the appeal is taken, shall be advanced upon the docket of that court, and shall be determined at the earliest practical date, without any extension of time for filing of briefs, but the court to which appeal is taken may, on application, hear oral arguments.

(d) If judgment is affirmed on appeal, it may be increased by ten percent (10%), if the appeal is found to be frivolous, in addition to any interest that may be allowed.

(e) A change of venue may be taken from the judge to which the cause is appealed as provided by law for taking changes of venue from the judge of the circuit court.

(f) The court to which appeal is taken shall render its opinion in abbreviated form by simply citing the controlling authorities in the case, unless it appears that some new question of practice, procedure, or law is involved that would warrant a more extensive opinion. [IC 33-10.1-5-10, as added by Acts 1980, P.L. 8, § 162; P.L.12-1992, § 132.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than 700,000 is Lake, and the three cities with the

largest populations in Lake County are East Chicago, Gary, and Hammond.

Cited: *Straley v. Faulkner*, 482 N.E.2d 471 (Ind. App. 1985).

CHAPTER 6

PERSONNEL, EXPENSES, AND COSTS

SECTION.

33-10.1-6-1. [Repealed.]

33-10.1-6-1.1. Officers of a city court — Officers of a town court.

33-10.1-6-2. Clerk of city court — Bond — Duties — Weekly report — Deposit and distribution of collected court costs.

33-10.1-6-3. Bailiff of city court — Appointed by chief of police or judge of the court — Bond — Duties of bailiff — Salary — Fees collected from defendant — Use of private vehicle.

33-10.1-6-4. Service of process by town marshal or deputy marshal.

SECTION.

33-10.1-6-5. Creation of position of city court referee — Oath — Duties — Salary.

33-10.1-6-6. Duties of prosecuting attorney of judicial circuit — Duties of city attorney.

33-10.1-6-7. Provision for documents necessary for discharge of duties of the court.

33-10.1-6-8, 33-10.1-6-9. [Repealed.]

33-10.1-6-10. Court costs in Lake County — Disposition.

33-10.1-6-11 — 33-10.1-6-13. [Repealed.]

33-10.1-6-1. [Repealed.]

Compiler's Notes. This section, concerning city court officers, was repealed by Acts 1981, P.L. 44, § 61. For present law, see IC 33-10.1-6-1.1.

33-10.1-6-1.1. Officers of a city court — Officers of a town court. —

(a) The officers of a city court are a judge, a clerk, and a bailiff. However, in third class cities, the judge may act as clerk and perform all duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as clerk of the court or appoint a clerk of the court, the city clerk elected under IC 36-4-10 shall perform the duties of the clerk of the city court.

(b) The clerk is an officer of a town court. The judge of a town court may act as clerk and perform all duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as a clerk of the court or appoint a clerk of the court, the town clerk-treasurer elected under IC 36-5-6-4 shall perform the duties of the clerk of the town court.

(c) The clerk and bailiff may not receive any fees or compensation other than their respective salaries. [IC 33-10.1-6-1.1, as added by Acts 1981, P.L. 44, § 34; P.L.33-1998, § 4.]

33-10.1-6-2. Clerk of city court — Bond — Duties — Weekly report — Deposit and distribution of collected court costs. —

(a) In second class cities, the city clerk is the clerk of the city court. The city clerk of a third class city is the clerk of the city court if the judge does not serve as clerk or appoint a clerk under section 1.1 [IC 33-10.1-6-1.1] of this chapter. A city clerk of a second or third class city or an appointed clerk in a third class city who serves as the clerk of the city court shall give bond as prescribed in this chapter. The clerk may administer oaths. The clerk of a city or town court shall:

- (1) issue all process of the court, affix the seal of the court to it, and attest it;
- (2) keep a complete record and docket of all cases, showing what persons were arrested and brought before the court, how the cases were disposed of, and giving an account of the fees, fines, penalties, forfeitures, judgments, executions, decrees, and orders in the same manner, as nearly as may be, as such records are kept by the clerk of the circuit court; and
- (3) collect all fees, fines, penalties and forfeitures, judgments, executions, and money accruing to the city or town from the enforcement of ordinances.

(b) At the close of each week the clerk shall make out and deliver to the city controller a written report of all cases in which the clerk has received or collected any fines or forfeitures due the city or town. The clerk shall then pay over the money to the controller and take a receipt for them. At the end of each month the clerk shall make out and deliver to the county treasurer of the county in which the city or town is located a written report of all cases in which the clerk has received or collected any fines or forfeitures due the state during the month and then pay to the county treasurer all fines or forfeitures collected, taking a receipt for them. In those cities where the county treasurer rather than the city controller receives city money for deposit, the clerk shall report and deliver the money to the county treasurer.

(c) The clerk shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The clerk shall distribute the state and county share of court costs collected in accordance with IC 33-19-7-4. [IC 33-10.1-6-2, as added by Acts 1980, P.L. 8, § 162; P.L.334-1989(ss), § 29; P.L.33-1998, § 5.]

33-10.1-6-3. Bailiff of city court — Appointed by chief of police or judge of the court — Bond — Duties of bailiff — Salary — Fees collected from defendant — Use of private vehicle. — (a) The bailiff of the city court must be a police officer of the city assigned to the court by the chief of police, under direction of the board of public safety. However, the judge of the city court may appoint another person to serve as bailiff. The bailiff shall give bond payable to the city in the penal sum of one thousand dollars (\$1,000), with surety to be approved by the mayor, conditioned on the faithful and honest discharge of his duties. The bond shall be filed in the office of the controller or clerk-treasurer. The bailiff:

- (1) Shall be present at the sessions of the court, maintaining order and performing all other duties subject to the order of the court;
- (2) Shall take charge of all executions issued by the court and see to the collection of them;
- (3) Shall keep, in books to be furnished him by the controller or clerk-treasurer, an accurate account and docket of all executions that come into his hands, showing the names of the defendants, date and number of the execution, amount of fines, fees, or penalties imposed, and the disposition of the execution; and
- (4) Shall make out and deliver a written report to the clerk of the court, or to the judge acting as clerk, on Tuesday of each week, showing all money collected by him during the previous week, giving the names of the defendants, number of executions, amount of fines, and fees, or penalties collected, and then pay the money to the clerk, or judge acting as clerk, taking his receipt for them.

The salary of the bailiff of the court shall be fixed as salaries of other police officers are fixed.

(b) The bailiff of a city court of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall be appointed by the judge of the court. The bailiff shall serve and execute all processes issued by the court and is entitled to receive a salary fixed by the common council of the city. In addition, the bailiff may collect a fee from the defendant for his own use on all execution sales of property under an execution or attachment as follows:

- (1) On the first fifty dollars (\$50), ten percent (10%).
- (2) Between fifty dollars (\$50) and three hundred dollars (\$300), five percent (5%).
- (3) On all sums over three hundred dollars (\$300), three percent (3%).
- (4) Any additional sum necessarily expended by him in collecting the judgment.

A bailiff may use his private vehicle in the performance of his duties and is entitled to receive a sum for mileage equal to the sum paid per mile to state

officers and employees. The payment to the bailiff is subject to the approval of the judge. The judge shall include in the budget for the court sufficient money to provide for the anticipated claims of the bailiff. The common council shall make annual appropriations that are necessary to carry out this subsection. [IC 33-10.1-6-3, as added by Acts 1980, P.L. 8, § 162; P.L.12-1992, § 133.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than

700,000 is Lake, and the three cities with the largest populations in Lake County are East Chicago, Gary, and Hammond.

33-10.1-6-4. Service of process by town marshal or deputy marshal. — The town marshal or a deputy marshal shall serve all process issuing from the town court. [IC 33-10.1-6-4, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-6-5. Creation of position of city court referee — Oath — Duties — Salary. — (a) The common council of a city having a city court may create the position of city court referee to assist the city court judge in the administration of his duties and the disposition of those matters pending in the court. The common council may authorize more than one (1) referee. After authorization is granted, the judge shall appoint one (1) or more referees. The referee or referees serve at the pleasure of the judge.

(b) A referee shall take the same oath of office as provided for the judge and must have the same qualifications for office as required for the judge. A referee may administer oaths in the performance of his duty and use the seal of the court. In all cases coming before him, the referee shall comply with the requirements of procedure provided for the hearing of cases by the court. He shall make a return of his findings and recommendations in writing to the court, which shall proceed to enter the order, judgment, or decree that it considers proper.

(c) The salary of a referee shall be fixed by the judge subject to the approval of the common council of the city. The common council shall appropriate sufficient money to pay the referee. [IC 33-10.1-6-5, as added by Acts 1980, P.L. 8, § 162.]

NOTES TO DECISIONS

Powers.

A referee has no authority either express or implied, to issue orders or decrees which represent binding judicial determinations in the cases which have been assigned to him and lacks the necessary authority to make the

final and binding determination involved in the issuance of a search warrant. *Stokes v. State*, 168 Ind. App. 514, 343 N.E.2d 788, 51 Ind. Dec. 681 (1976) (decided under former IC 33-13-10-2).

33-10.1-6-6. Duties of prosecuting attorney of judicial circuit — Duties of city attorney. — The prosecuting attorney of the judicial circuit in which the city is located shall prosecute all cases in a city court for violation of statutes. The city attorney shall prosecute all cases of violations of the ordinances of the city. [IC 33-10.1-6-6, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-6-7. Provision for documents necessary for discharge of duties of the court. — A judge of a city or town court shall provide, at the expense of the city or town, all books, dockets, papers, and printed blanks necessary for the discharge of the duties of the court. [IC 33-10.1-6-7, as added by Acts 1980, P.L. 8, § 162.]

33-10.1-6-8, 33-10.1-6-9. [Repealed.]

Compiler's Notes. These sections, concerning docket fees in civil cases generally; and a docket fee and local law enforcement continuing education fee where defendant violated a statute or ordinance of the city or town and the permanent operator's record fee, respectively, were repealed by P.L.305-

1987, § 38, effective July 1, 1987. For present provisions concerning court costs, see IC 33-19.

P.L.192-1986, § 26 amended IC 33-10.1-6-9 effective July 1, 1987, but because of the repeal never went into effect.

33-10.1-6-10. Court costs in Lake County — Disposition. — (a) A clerk of a city court in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The fees received by the controller from the clerk shall be paid into the city treasury at the time of the semiannual settlement for city revenue.

(b) If the party instituting an action or proceeding recovers judgment, the judgment must also include as costs an amount equal to the small claims costs fee prescribed under IC 33-19-5-5.

(c) Money paid in advance for costs remaining unexpended at the time an action or proceeding is terminated, whether by reason of dismissal or otherwise, shall be returned to the party or parties making payment. However, this section does not apply to civil actions or proceedings instituted by or on behalf of the state or any of its political subdivisions. [IC 33-10.1-6-10, as added by Acts 1980, P.L. 8, § 162; P.L.334-1989(ss), § 30; P.L.12-1992, § 134.]

Compiler's Notes. According to the 1990 federal census, the county having a popula-

tion of more than 400,000 but less than 700,000 is Lake.

33-10.1-6-11 — 33-10.1-6-13. [Repealed.]

Compiler's Notes. These sections, concerning witness fees, jury fees, and commencement of civil actions in a city court of a county having three or more second-class cities, were repealed by P.L.305-1987, § 38 and

P.L.5-1988, § 170. For present provisions concerning witness fees, see IC 33-19-1-5 and IC 33-19-1-6. For present provisions concerning jury fees, see IC 33-19-1-4.

ARTICLE 10.5

COUNTY COURT LAW

CHAPTER

1. GENERAL PROVISIONS, 33-10.5-1-1 — 33-10.5-1-9.

CHAPTER

2. ORGANIZATION OF COUNTY COURT SYSTEM, 33-10.5-2-1 — 33-10.5-2-11.

CHAPTER

3. JURISDICTION, 33-10.5-3-1 — 33-10.5-3-9.
4. SELECTION OF JUDGES, 33-10.5-4-1 — 33-10.5-4-3.
5. JUDGES — GENERAL PROVISIONS, 33-10.5-5-1 — 33-10.5-5-3.
6. JUDGES — DISQUALIFICATION — DISCIPLINE — REMOVAL, 33-10.5-6-1 — 33-10.5-6-6.

CHAPTER

7. RECORDS, PROCEDURES, AND PRACTICE, 33-10.5-7-1 — 33-10.5-7-10.
8. COURT FACILITIES, PERSONNEL, EXPENSES, COSTS, 33-10.5-8-1 — 33-10.5-8-12.
9. [REPEALED.]
10. MAGISTRATES, 33-10.5-10-1, 33-10.5-10-2.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 33-10.5-1-1. Gender, number.
- 33-10.5-1-2. Purpose.
- 33-10.5-1-3. Definitions.
- 33-10.5-1-4. Establishment generally.
- 33-10.5-1-5. [Repealed.]

SECTION.

- 33-10.5-1-6. County courts having two judges.
- 33-10.5-1-7. No county court in Lake County.
- 33-10.5-1-8, 33-10.5-1-9. [Repealed.]

33-10.5-1-1. Gender, number. — For the purposes of this article the masculine includes the feminine and, where appropriate, the singular includes the plural. [IC 33-10.5-1-1, as added by Acts 1975, P.L. 305, § 48.]

Indiana Law Review. The Taxation of Costs in Indiana Courts, 9 Ind. L. Rev. 679.

Opinions of Attorney General. A vacancy in the office of county court judge subsequent to initial appointment by the circuit

court of the county but prior to the commencement of the regular four year term must be filled by the governor under Art. 5, § 18 of the Indiana Constitution. 1976, No. 6, p. 16.

NOTES TO DECISIONS

Transfer of Cases.

Acts 1975, P.L. 305, § 56 (compiled as a note to this section) is sufficient to transfer justice of the peace court cases to the various

circuit and superior courts as well as to the county courts established. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-1-2. Purpose. — It is the purpose of this article to create a new court known as the county court to replace justice of the peace courts. [IC 33-10.5-1-2, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-1-3. Definitions. — As used in this article:

“Chief justice” means the chief justice of Indiana.

“Judge” means a county court judge or, where the context requires, a judge of a unified superior court.

“Temporary transfer” means an assignment for a period of time not to exceed the duration of a six (6) year term. [IC 33-10.5-1-3, as added by Acts 1975, P.L. 305, § 48; 1977, P.L. 315, § 17; P.L.167-1984, § 65.]

33-10.5-1-4. Establishment generally. — (a) A county court is established in each county, except in a county:

- (1) For which IC 33-4 provides a small claims docket of the circuit court;
- (2) For which IC 33-5 provides a small claims docket of the superior court; or
- (3) For which IC 33-11.6 provides a small claims court.

(b) Each county court has one (1) judge, except as otherwise provided in this chapter. [IC 33-10.5-1-4, as added by Acts 1977, P.L. 315, § 18; P.L.167-1984, § 66; P.L.133-1992, § 59.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1994.

33-10.5-1-5. [Repealed.]

Compiler's Notes. This section, relating to joint county courts, was repealed by P.L.133-1992, § 64, effective July 1, 1992.

33-10.5-1-6. County courts having two judges. — The county courts of the following counties each have two (2) judges:

Madison County.

Tippecanoe County.

Vigo County.

[IC 33-10.5-1-6, as added by Acts 1977, P.L. 315, § 20; 1978, P.L. 141, § 2; 1979, P.L. 281, § 2; P.L.292-1983, § 7; P.L.186-1986, § 22; P.L.392-1987(ss), § 24; P.L.18-1995, § 106.]

Effective Dates. P.L.392-1987(ss), § 45. January 1, 1988.

33-10.5-1-7. No county court in Lake County. — Notwithstanding section 4 [IC 33-10.5-1-4] of this chapter, Lake County does not have a county court. However, the county division of the superior court of Lake County shall maintain the dockets described in IC 33-10.5-7-1. [IC 33-10.5-1-7, as added by Acts 1977, P.L. 315, § 21, p. 1455; P.L.176-1988, § 43.]

Effective Dates. P.L.176-1988, § 59, declared an emergency and provided that this section take effect January 1, 1989.

33-10.5-1-8, 33-10.5-1-9. [Repealed.]

Compiler's Notes. These sections, relating to the Harrison county court and the Porter county court, were repealed by

P.L.392-1987(ss), § 26, effective January 1, 1988, and P.L.133-1992, § 64, effective July 1, 1992.

CHAPTER 2

ORGANIZATION OF COUNTY COURT SYSTEM

SECTION.

33-10.5-2-1, 33-10.5-2-2. [Repealed.]

33-10.5-2-3. Divisions.

33-10.5-2-4. Organizational plan for speedy disposition of cases.

SECTION.

33-10.5-2-4.5. [Repealed.]

33-10.5-2-5. Powers of judges.

33-10.5-2-6 — 33-10.5-2-11. [Repealed.]

33-10.5-2-1, 33-10.5-2-2. [Repealed.]

Compiler's Notes. These sections, concerning creation of county court system or a small claims and misdemeanor division of circuit court in certain counties, were re-

pealed by Acts 1977, P.L. 315, § 29. For present law, see IC 33-10.5-1-4 — IC 33-10.5-1-7.

33-10.5-2-3. Divisions. — There shall be one (1) division for each judge of the county court. Each division shall include the entire county or counties the judge normally serves. [IC 33-10.5-2-3, as added by Acts 1975, P.L. 305, § 48; P.L.5-1988, § 171.]

33-10.5-2-4. Organizational plan for speedy disposition of cases. — (a) The judge shall formulate a plan of organization for the efficient operation of his court, which shall include but not be limited to provisions which will facilitate speedy disposition of cases involving motorists charged with the violation of traffic laws of the state.

(b) The organizational plan shall provide for a system of posting bond in traffic cases by designating the places where bond may be posted with due consideration given to factors of convenience to both law enforcement officers and alleged offenders.

(c) To facilitate the speedy disposition of cases involving traffic violations, the organizational plan shall provide for a standard traffic violations bureau for the county court under IC 34-28-5-7 through IC 34-25-5-13. The plan shall insure, in such a case, that the defendant is advised of all rights. A judge serving more than one (1) county shall establish a traffic violations bureau in each county. [IC 33-10.5-2-4, as added by Acts 1975, P.L. 305, § 48; P.L.171-1984, § 57; P.L.1-1998, § 182.]

NOTES TO DECISIONS

ANALYSIS

Assignment of functions.
Courts not required to comply.

Assignment of Functions.

Each particular court may determine how the small claims and misdemeanor functions are to be assigned. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

Courts Not Required to Comply.

Superior courts exercising small claims jurisdiction are not required to adopt the provisions of this section although any particular superior court may do so pursuant to Trial Rule 81. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-2-4.5. [Repealed.]

Compiler's Notes. This section, concerning court administration in Lake County, was repealed by P.L.1-1990, § 321.

33-10.5-2-5. Powers of judges. — Each judge of the county court shall have full power to make and adopt rules and regulations for conducting the business of the court.

The judge of the county court has the power to perform marriages; to issue warrants; to issue and direct all process necessary in exercising the court's jurisdiction; to make all proper judgments, sentences, decrees and orders; to

issue all process; and do all acts necessary and proper to carry out the provisions of this article. The judge of the county court shall have the same power as the judge of a circuit court in relation to the attendance of witnesses; the punishment of contempts and the enforcement of its orders; to administer oaths; and to give all necessary certificates for the authentication of the records and proceedings of the court. [IC 33-10.5-2-5, as added by Acts 1975, P.L. 305, § 48.]

NOTES TO DECISIONS

Local Court Rules.

The superior and county courts exercising small claims and misdemeanor jurisdiction are empowered by Trial Rule 81 to make local rules to facilitate the handling of cases. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-2-6 — 33-10.5-2-11. [Repealed.]

Compiler's Notes.

These sections, concerning the traffic violations bureau of the county court system, were repealed by Acts 1981, P.L. 108, § 40. For present law, see IC 34-28-5-7 — IC 34-28-5-13.

CHAPTER 3
JURISDICTION

SECTION.	SECTION.
33-10.5-3-1. Jurisdiction of county court.	33-10.5-3-6. Quarterly reports.
33-10.5-3-2. Jurisdiction — Exclusions.	33-10.5-3-7. Temporary transfer of judge to another county.
33-10.5-3-3. [Repealed.]	33-10.5-3-8. Travel expenses to be paid transferred judge.
33-10.5-3-4. Seal.	33-10.5-3-9. Judicial conference.
33-10.5-3-5. Transfer of cases from circuit, superior or criminal court.	

33-10.5-3-1. Jurisdiction of county court. — (a) The county court has the following jurisdiction:

- (1) Original and concurrent jurisdiction in all civil cases founded on contract or tort in which the debt or damage claimed does not exceed ten thousand dollars (\$10,000).
- (2) Original and concurrent jurisdiction in possessory actions between a landlord and tenant and original exclusive jurisdiction in actions for the possession of property where the value of the property sought to be recovered does not exceed ten thousand dollars (\$10,000).
- (3) Original and concurrent jurisdiction of all Class D felony, misdemeanor, and infraction cases.
- (4) Original and concurrent jurisdiction of cases involving the violation of ordinances of cities, towns, or other municipal corporations.
- (5) Original and concurrent jurisdiction of cases involving violations of ordinances which relate to traffic.

(b) Where a defendant is charged with a crime not within the jurisdiction of the county court, the court may hold the defendant to bail in an equal amount of either cash or surety. [IC 33-10.5-3-1, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 27; 1977, P.L. 313, § 11; 1979, P.L. 282, § 1; P.L.304-1983, § 2; P.L.171-1984, § 58; P.L.301-1985, § 3.]

Cross References. Traffic violations bureau, IC 34-28-5-7 — IC 34-28-5-13.

Indiana Law Journal. City and Town Courts: Mapping Their Dimensions, 67 Ind. L.J. 59 (1991).

Cited: In re 1975 Senate Enrolled Act No.

441, 263 Ind. 350, 48 Ind. Dec. 169, 332 N.E.2d 97 (1975); *Watts v. State*, 434 N.E.2d 891 (Ind. App. 1982); *Castro v. State*, 442 N.E.2d 1141 (Ind. App. 1982); *Superior Constr. Co. v. Carr*, 564 N.E.2d 281 (Ind. 1990); *In re Haan*, 676 N.E.2d 740 (Ind. 1997).

NOTES TO DECISIONS

ANALYSIS

Equitable claims.
Legitimate state interest.
Partial transfer.
Several claims.

Equitable Claims.

Where although buyers' complaint for return of payments representing buyers' equity in real estate contract which buyers had defaulted on was styled as a claim for unjust enrichment, they were in fact seeking recognition of their equity in the real estate and satisfaction of their equitable lien against it for this equity and county court lacked subject matter jurisdiction over the case and was without authority to render a judgment on the complaint. *Colonial Dist. Corp. v. Bowman*, 425 N.E.2d 266 (Ind. App. 1981).

Legitimate State Interest.

Using two existing court systems, where the only relevant difference is the number of jurors, is reasonably, fairly and substantially

related to a legitimate state interest in prompting the fair and efficient administration of justice. *O'Brien v. State*, 422 N.E.2d 1266 (Ind. App. 1981).

Partial Transfer.

Where suit was begun by filing a small claims complaint in the county court, but after the filing of counter claims plaintiff filed an additional count to the complaint seeking damages in excess of the jurisdiction of the county court, it was proper for the court to transfer only the additional count to the circuit court while retaining jurisdiction of the original complaint. *Batter Boy Bakery v. Corn*, 420 N.E.2d 1360 (Ind. App. 1981).

Several Claims.

If each claim filed was within the jurisdiction of the justice, he may have tried the cause, though the aggregate of all claims may have exceeded his jurisdiction. *State ex rel. Gellinger v. King*, 5 Ind. 439 (1854); *Andrews v. Powell*, 27 Ind. 303 (1866).

33-10.5-3-2. Jurisdiction — Exclusions. — The county court has no jurisdiction in actions seeking injunctive relief or involving partition of real estate, or to declare or enforce any lien thereon, nor shall the court have jurisdiction in matters pertaining to paternity, juvenile or probate, and has no jurisdiction in cases where the appointment of a receiver is asked or in suits for dissolution of marriage. The county court has jurisdiction to conduct preliminary hearings in felony cases. [IC 33-10.5-3-2, as added by Acts 1975, P.L. 305, § 48.]

Cited: *Rising Sun State Bank v. Fessler*, 74 Ind. Dec. 289, 400 N.E.2d 1164 (Ind. App. 1980).

NOTES TO DECISIONS

ANALYSIS

Equitable claims.
Liens.

Equitable Claims.

Where although buyers' complaint for return of payments representing buyers' equity in real estate contract which buyers had defaulted on was styled as a claim for unjust enrichment, they were in fact seeking recog-

nition of their equity in the real estate and satisfaction of their equitable lien against it for this equity and county court lacked subject matter jurisdiction over the case and was without authority to render a judgment on the complaint. *Colonial Dist. Corp. v. Bowman*, 425 N.E.2d 266 (Ind. App. 1981).

Liens.

Although the county court does not have

Liens. (Cont'd)
jurisdiction to enforce a lien there is jurisdiction to obtain a money judgment on the underlying debt. *Rasp v. Hidden Valley Lake,*

Inc., 487 N.E.2d 1338 (Ind. App. 1986), rev'd on other grounds, 519 N.E.2d 153 (Ind. App. 1988).

33-10.5-3-3. [Repealed.]

Compiler's Notes. This section, concerning jurisdiction of small claims and misdemeanor division of superior courts in certain

counties, was repealed by P.L.167-1984, § 92. For present law, see IC 33-5-2-4.

33-10.5-3-4. Seal. — The county court shall have a seal consisting of a circular disc containing the words, “_____ (insert name of county) County Court of the State of Indiana”. Where one (1) or more judges normally serve more than one (1) county there shall be a separate seal for each county. [IC 33-10.5-3-4, as added by Acts 1975, P.L. 305, § 48; P.L.3-1989, § 202.]

33-10.5-3-5. Transfer of cases from circuit, superior or criminal court. — A judge of the circuit, superior, or criminal court may order a cause filed in his court to be transferred to the county court and entered in the appropriate docket if the county court has jurisdiction of the cause concurrent with the circuit, superior, or criminal court and the county court judge consents to the transfer. A judge of the county court may order a cause filed in the plenary or criminal docket of the county court to be transferred to the circuit, superior, or criminal court and entered in the appropriate docket if the circuit, superior, or criminal court has jurisdiction of the cause concurrent with the county court and the judge thereof consents to the transfer. [IC 33-10.5-3-5, as added by Acts 1975, P.L. 305, § 48.]

NOTES TO DECISIONS

Constitutionality.
This section does not deny equal protection.

O'Brien v. State, 422 N.E.2d 1266 (Ind. App. 1981).

33-10.5-3-6. Quarterly reports. — (a) The county clerk shall prepare and the county court judge shall certify and file quarterly reports on March 31, June 30, September 30, and December 31 each year with the chief justice of the state. The reports shall include:

- (1) The gross case filings, terminations, and cases remaining open, broken down by the type of case; and
- (2) The number of jury trials, broken down by the type of case.

(b) The reports shall be in a form prescribed and distributed by the Indiana Supreme Court. Noncompliance with this section is grounds for censure or removal under IC 33-10.5-6-5. [IC 33-10.5-3-6, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 29; P.L.167-1984, § 67.]

NOTES TO DECISIONS

Court Reports.

The superior courts exercising small claims and misdemeanor jurisdiction shall file reports similar to those required of the county

courts with the chief judge of the superior courts. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-3-7. Temporary transfer of judge to another county. — On the basis of the quarterly reports concerning the volume and nature of judicial workload, the Supreme Court shall consider the temporary transfer of any judge of a county court to another county court if the temporary transfer is determined to be beneficial to facilitate the judicial work of the court to which the judge is transferred without placing an undue burden on the court from which the judge is transferred. However, no judge shall be temporarily transferred to a court in another county which, at its nearest point, is more than forth [forty] (40) miles from the county seat that the judge normally serves unless the judge consents to the transfer. [IC 33-10.5-3-7, as added by Acts 1975, P.L. 305, § 48.]

Compiler's Notes. The bracketed word "forty" in the last sentence was inserted by the compiler to correct an apparent error.

33-10.5-3-8. Travel expenses to be paid transferred judge. — Any judge transferred to a court in another county shall be paid travel and other necessary expenses by the county to which he is transferred. An allowance for expenses shall be certified by the chief justice in duplicate to the auditor of the county. [IC 33-10.5-3-8, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-3-9. Judicial conference. — The judges of the county court shall be members of the judicial conference of Indiana created by IC 1971, 33-13-14. [IC 33-10.5-3-9, as added by Acts 1975, P.L. 305, § 48.]

CHAPTER 4

SELECTION OF JUDGES

SECTION.

33-10.5-4-1. County court judges.

33-10.5-4-2. Election of county court judges.

SECTION.

33-10.5-4-3. [Repealed.]

33-10.5-4-1. County court judges. — To be eligible to serve as a county court judge, a person must meet the qualifications prescribed by IC 3-8-1-18. [IC 33-10.5-4-1, as added by Acts 1975, P.L. 305, § 48; Acts 1976, P.L. 132, § 30; 1981, P.L. 283, § 1; P.L.5-1986, § 23.]

Cross References. Term of office must begin before judge is 70 years of age, IC 33-10.5-6-1.

NOTES TO DECISIONS

Constitutionality.

Prior to the 1976 amendment of this section, subsections (a)(3)(ii) and (c) were unconstitutional, insofar as they authorized nonattorneys as county judges in violation of the separation of powers doctrine in Ind.

Const., Art. 3, § 1 and the responsibility for competence of judges in Ind. Const., Art. 7, § 4. In re 1975 Senate Enrolled Act No. 441, 263 Ind. 350, 332 N.E.2d 97, 48 Ind. Dec. 169 (1975).

33-10.5-4-2. Election of county court judges. — (a) The number of county court judges required by IC 33-10.5-1 shall be elected under IC 3-10-2-11 by the voters of each county or by the voters of two (2) counties if a judge is required to serve two (2) counties. The term of office of a county court judge is six (6) years, beginning on January 1 after election and continuing until a successor is elected and qualified.

(b) In any county for which IC 33-10.5-1 provides more than one (1) judge of the county court, the county election board shall assign a number to each division of the court. After that, any candidate for judge of the county court must file a declaration of candidacy under IC 3-8-2 or petition of nomination under IC 3-8-6 for one (1) specified division of the court. Each division of the court shall be listed separately on the election ballot in the form prescribed by IC 3-10-1-19 and IC 3-11-2. [IC 33-10.5-4-2, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 31; 1977, P.L. 315, § 22; P.L.167-1984, § 68; P.L.5-1986, § 24; P.L.3-1987, § 538.]

33-10.5-4-3. [Repealed.]

Compiler's Notes. This section, concerning selection, removal, tenure and salary of

superior court judges, was repealed by P.L.167-1984, § 92.

CHAPTER 5

JUDGES — GENERAL PROVISIONS

SECTION.

33-10.5-5-1. Terms of court — Vacations.

33-10.5-5-2. Compensation.

SECTION.

33-10.5-5-3. Retirement.

33-10.5-5-1. Terms of court — Vacations. — The county court shall have no term of court, but shall meet in continuous session. A vacation of one (1) month per year shall be provided for the judge of the county court. The judge of the county court shall coordinate his schedule in order that no great inconvenience is caused to those seeking the services of the court during the vacation period. The judge may appoint a judge pro tem to handle the court's judicial business during the judge's vacation or for any period the judge deems necessary. In no event shall the sitting of a judge pro tem become a standard practice of the court. [IC 33-10.5-5-1, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-5-2. Compensation. — (a) The salary of a county court judge who serves more than one (1) county shall be paid by the respective counties in equal amounts.

(b) The salary of every county court judge, as set by IC 33-13-12, shall be paid in equal monthly installments. [IC 33-10.5-5-2, as added by Acts 1975, P.L. 305, § 48; 1979, P.L. 283, § 1; P.L.299-1983, § 2; P.L.285-1989, § 1.]

Effective Dates. P.L.285-1989, § 6. January 1, 1990.

33-10.5-5-3. Retirement. — Each judge of the county court shall be a participant in the judges' retirement fund under IC 33-13. [IC 33-10.5-5-3, as added by Acts 1975, P.L. 305, § 48; P.L.293-1985, § 4.]

CHAPTER 6

JUDGES — DISQUALIFICATION — DISCIPLINE — REMOVAL

SECTION.

33-10.5-6-1. Disqualification by age — Temporary judicial duties.

33-10.5-6-2. Disqualification on pending indictment or recommendation for removal.

33-10.5-6-3. Commission on judicial qualifications.

SECTION.

33-10.5-6-4. Suspension.

33-10.5-6-5. Discipline.

33-10.5-6-6. Full time required — Practice of law prohibited.

33-10.5-6-1. Disqualification by age — Temporary judicial duties. — A person may not run for judge of a county court if he will be seventy (70) years of age or older before he begins his term of office. The chief justice of the state is empowered to authorize a judge retired due to age to perform temporary judicial duties in a county court. [IC 33-10.5-6-1, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-6-2. Disqualification on pending indictment or recommendation for removal. — A judge is disqualified from acting as a judicial officer, without loss of salary, while there is pending:

(1) An indictment or information charging him in any court in the United States with a crime punishable as a felony under the laws of the state or the United States; or

(2) A recommendation to the Supreme Court by the commission on judicial qualifications of the state of Indiana for his removal or retirement. [IC 33-10.5-6-2, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-6-3. Commission on judicial qualifications. — The commission on judicial qualifications created pursuant to Article 7, Section 9 of the Indiana Constitution shall serve as the commission on judicial qualifications for judges of the county court. The procedures and practices provided by IC 33-2.1 for the organization and operation of the commission on judicial qualifications shall govern the practice and procedure in all proceedings brought under this section. [IC 33-10.5-6-3, as added by Acts 1975, P.L. 305, § 48; 1981, P.L. 272, § 93.]

33-10.5-6-4. Suspension. — On recommendation of the commission on judicial qualifications or on its own motion, the Supreme Court may suspend

a judge from office without salary when, in any court in the United States, he pleads guilty, no contest, or is found guilty of a crime punishable as a felony under the laws of a state or the United States, or any crime that involves moral turpitude under the law. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final, the Supreme Court shall remove him from office. [IC 33-10.5-6-4, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-6-5. Discipline. — (a) On recommendation of the commission on judicial qualifications the Supreme Court may:

- (1) Retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent; and
 - (2) Censure or remove a judge, for action occurring not more than six (6) years prior to the commencement of his current term, when such action constitutes willful misconduct in office; willful and persistent failure to perform his duties; habitual intemperance; or conduct prejudicial to the administration of justice that brings that judicial office into disrepute.
- (b) Upon receipt by the Supreme Court of a recommendation, the court shall hold a hearing and make such determinations as required. The judge is entitled to be present at the hearing.
- (c) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in the state. A judge removed forfeits his interest in the judges' retirement system or to an annuity under that law; except the right of return of contributions made by that judge, plus accrued interest. [IC 33-10.5-6-5, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-6-6. Full time required — Practice of law prohibited. — The judge of the county court shall devote full time to his judicial duties and may not engage in the practice of law. [IC 33-10.5-6-6, as added by Acts 1975, P.L. 305, § 48.]

CHAPTER 7

RECORDS, PROCEDURES, AND PRACTICE

SECTION.	SECTION.
33-10.5-7-1. Dockets.	33-10.5-7-6. Number of jurors in criminal cases.
33-10.5-7-2. Practice and procedure — Exceptions.	33-10.5-7-7. Satisfaction of judgment.
33-10.5-7-3. Change of venue from county — From judge.	33-10.5-7-8. Court of record.
33-10.5-7-4. [Repealed.]	33-10.5-7-9. Judgments are liens on real property.
33-10.5-7-5. Trial by jury.	33-10.5-7-10. Appeals.

33-10.5-7-1. Dockets. — Each judge of the county court shall maintain the following dockets:

- (1) An offenses and violations docket.

(2) A small claims docket for:

(A) All cases where the amount sought or value of the property sought to be recovered is three thousand dollars (\$3,000) or less; the plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of his claim over three thousand dollars (\$3,000) to bring it within the jurisdiction of the small claims docket; and

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(3) A plenary docket for all other civil cases.

[IC 33-10.5-7-1, as added by Acts 1975, P.L. 305, § 48; 1977, P.L. 313, § 13; 1981, P.L. 284, § 1; P.L.167-1984, § 69; P.L.19-1986, § 55; P.L.301-1987, § 3.]

Valparaiso University Law Review. Private Judging: An Effective and Efficient Alternative to the Traditional Court System, 21 Val. U.L. Rev. 681 (1987).

Cited: Teegarden v. Sattison, 76 Ind. Dec. 192, 404 N.E.2d 1163 (Ind. App. 1980); Batter Boy Bakery v. Corn, 420 N.E.2d 1360 (Ind. App. 1981).

33-10.5-7-2. Practice and procedure — Exceptions. — Except as otherwise provided in this article the practice and procedure in the county court shall be as provided by statute and Indiana rules of procedure as adopted by the Supreme Court of Indiana. However, in cases of the small claims docket there shall be the following exceptions:

(a) Defendants shall be deemed to have complied with the statute and rule requiring the filing of an answer upon entering their appearance personally or by attorney. The appearance shall be deemed a general denial and shall preserve all defenses and compulsory counterclaims which may then be presented at the trial of the cause.

(b) If, at the trial of the cause, the court determines that the complaint is so vague and ambiguous that the defendant was unable to determine the nature of plaintiffs' claim, or that the plaintiff is surprised by defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated, the court shall grant a continuance.

(c) The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise. [IC 33-10.5-7-2, as added by Acts 1975, P.L. 305, § 48.]

Cited: Reynolds v. Meehan, 176 Ind. App. 385, 62 Ind. Dec. 387, 375 N.E.2d 1119 (1978);

Teegarden v. Sattison, 76 Ind. Dec. 192, 404 N.E.2d 1163 (Ind. App. 1980).

NOTES TO DECISIONS

ANALYSIS

Judicial notice.

Notice necessary.

Prerogatives of judges.

Judicial Notice.

Requiring the court to take judicial notice of ordinances is unconstitutional as being contrary to procedure previously adopted by the Supreme Court. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975) (decided under former IC 33-10.5-7-4).

Notice Necessary.

This section does not abrogate the necessity of the notice required by the Tort Claims Act (former IC 34-4-16.5-6, repealed; for present similar provisions, see IC 34-13-3-6).

Lawrence County Comm'rs v. Chorley, 73 Ind. Dec. 349, 398 N.E.2d 694 (Ind. App. 1979).

Prerogatives of Judges.

The circuit courts assuming justice of the peace jurisdiction as provided in IC 33-10.5-1-1 — IC 33-10.5-8-4 are required to adopt this section only and it is the prerogative of the judges of those courts to adopt other provisions of the statute as they deem necessary for the handling of their business. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-7-3. Change of venue from county — From judge. — There is no change of venue from the county as of right in cases in the county court. However, a change of venue from the judge shall be granted as provided by statute and rules of the Supreme Court of Indiana. [IC 33-10.5-7-3, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 33; P.L.167-1984, § 70.]

Cited: State ex rel. Dedelow v. Lake County Court, 270 Ind. 25, 66 Ind. Dec. 123, 383 N.E.2d 284 (1978).

NOTES TO DECISIONS

ANALYSIS

Cases filed in plenary docket.
Section not binding on courts.

Cases Filed in Plenary Docket.

Where case was filed in the plenary docket and not the small claims docket, the granting of a motion for change of venue from the judge was mandatory under the provisions of TR. 76. Teegarden v. Sattison, 76 Ind. Dec. 192, 404 N.E.2d 1163 (Ind. App. 1980).

Section Not Binding on Courts.

Superior courts exercising small claims jurisdiction are not required to adopt the provisions of this section although any particular superior court may do so pursuant to Trial Rule 81. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-7-4. [Repealed.]

Compiler's Notes. This section, concerning judicial notice of local ordinance was repealed by Acts 1976, P.L. 132, § 45.

33-10.5-7-5. Trial by jury. — (a) The filing of a small claim in the county court is deemed a waiver of trial by jury.

(b) The defendant may, not later than ten (10) days following service of the complaint, make demand for a trial by jury by affidavit stating that there are questions of fact requiring a trial by jury, and specifying the same and that such is intended in good faith.

(c) Notice of the defendant's right to a jury trial, and the ten (10) day period in which to file for a jury trial, shall be clearly stated on the notice of claim or on an additional sheet to be served with the notice of claim on the defendant.

(d) Upon the deposit of seventy dollars (\$70) in the small claims docket by the defendant, the court shall transfer the claim to the plenary docket. Upon transfer, the claim shall lose its status as a small claim. [IC 33-10.5-7-5, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 34; P.L.167-1984, § 71; P.L.209-1996, § 6; P.L.213-1996, § 3.]

Cited: *Stout v. Kokomo Manor Apts.*, 677 N.E.2d 1060 (Ind. App. 1997).

NOTES TO DECISIONS

ANALYSIS

Notice of right to jury trial.

Waiver.

—Automatic.

Notice of Right to Jury Trial.

Where notice of claim in small claim proceeding did not advise defendant of his right to jury trial, the case was required to be reversed and remanded for a new trial even though defendant did not request a jury trial and defendant did not show how he was prejudiced by not having a jury trial when his case was otherwise fairly tried. *Lickliter v.*

Rust Feed & Seed & Lumber, Inc., 421 N.E.2d 10 (Ind. App. 1981).

Waiver.

—Automatic.

The automatic waiver of a jury trial by filing a small claims court action is not unconstitutional. The right to a jury trial is altered in small claims court actions only; the right remains unaffected when the claim is filed in a court of proper jurisdiction. *Robb v. Matthews Buick-Pontiac, Inc.*, 516 N.E.2d 1110 (Ind. App. 1987).

Collateral References. Small claims: jury trial rights in, and on appeal from, small claims court proceeding. 70 A.L.R.4th 1119.

33-10.5-7-6. Number of jurors in criminal cases. — With respect to jury trials for criminal cases in the county court, the jury shall consist of the number of qualified jurors required by IC 35-37-1-1. When a jury trial is demanded, the county court may call a jury from the list provided and used by the circuit court. [IC 33-10.5-7-6, as added by Acts 1975, P.L. 305, § 48; 1981, P.L. 281, § 2; P.L.171-1984, § 60.]

Cited: *Smith v. State*, 176 Ind. App. 37, 61 Ind. Dec. 544, 373 N.E.2d 1112 (1978); *Watts*

v. State, 434 N.E.2d 891 (Ind. App. 1982); *Holliness v. State*, 467 N.E.2d 4 (Ind. 1984).

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Number of jurors.

Section not binding on courts.

Constitutionality.

The requirement of six-member juries is constitutional. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

Number of Jurors.

While a felony defendant has a constitu-

tional right to a jury trial, nothing in the federal or Indiana Constitutions guarantees him a specific number of jurors. *O'Brien v. State*, 422 N.E.2d 1266 (Ind. App. 1981).

There is, in effect, no constitutional difference between a six-member jury and a twelve-member jury so long as each provides the requisite safeguard against overzealous prosecutors and eccentric judges. *O'Brien v. State*, 422 N.E.2d 1266 (Ind. App. 1981).

Section Not Binding on Courts.

Superior courts exercising small claims jurisdiction are not required to adopt the provi-

Section Not Binding on Courts. (Cont'd)
sions of this section although any particular
superior court may do so pursuant to Trial

Rule 81. In re Pub. Law No. 305 & Pub. Law
No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind.
Dec. 754 (1975).

33-10.5-7-7. Satisfaction of judgment. — If the court or jury finds against the defendant, the court shall specify the terms and conditions for satisfaction of the judgment. The judgment may be paid in installments. The judge may stay the issuance of execution and other supplementary process during compliance. The stay may be modified or vacated by the court. [IC 33-10.5-7-7, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-7-8. Court of record. — The county court shall be a court of record. [IC 33-10.5-7-8, as added by Acts 1975, P.L. 305, § 48.]

33-10.5-7-9. Judgments are liens on real property. — All judgments rendered in civil actions shall be properly recorded in the judgment docket book of the county court. Judgments shall be liens on real estate when entered in the county court judgment docket in the same manner as judgments in a court of general jurisdiction become liens on real estate under IC 34-55-9. The clerk of the county court shall keep a judgment docket in which judgments shall be entered and properly indexed in the name of the judgment defendant as judgments of circuit courts are entered and indexed. [IC 33-10.5-7-9, as added by Acts 1975, P.L. 305, § 48; 1981, P.L. 272, § 94; P.L.305-1983, § 1; P.L.3-1990, § 115; P.L.1-1998, § 183.]

33-10.5-7-10. Appeals. — An appeal of a judgment from the county court shall be taken in the same manner and under the same rules and statutes and with the same assessment of costs as cases appealed from circuit court. [IC 33-10.5-7-10, as added by Acts 1975, P.L. 305, § 48.]

Cited: In re 1975 Senate Enrolled Act No.
441, 263 Ind. 350, 48 Ind. Dec. 169, 332
N.E.2d 97 (1975); Reynolds v. Meehan, 176

Ind. App. 385, 62 Ind. Dec. 387, 375 N.E.2d
1119 (1978).

CHAPTER 8

COURT FACILITIES, PERSONNEL, EXPENSES, COSTS

SECTION.	SECTION.
33-10.5-8-1. Place of holding court — Facilities.	33-10.5-8-3. Expenses.
33-10.5-8-2. Clerk and sheriff — Duties — Bailiff, reporter and other employees.	33-10.5-8-4. Schedule coordination of county court judge and circuit judge.
	33-10.5-8-5 — 33-10.5-8-12. [Repealed.]

33-10.5-8-1. Place of holding court — Facilities. — (a) The board of county commissioners of each county shall provide a suitable place or places for the holding of court for each judge of the county court sitting in its county. The county may rent suitable facilities from other governmental units.

(b) A judge may conduct hearings and hold court in cities or towns outside the place provided by the board of county commissioners if he deems it necessary for the convenience of the citizens of the district.

(c) Each judge of the county court shall provide by rule for an evening session to be held once each week in each county served by the court. Additional sessions in the evening and on holidays shall be held as necessary to ensure the just, speedy, and inexpensive determination of every action. [IC 33-10.5-8-1, as added by Acts 1975, P.L. 305, § 48; Acts 1976, P.L. 132, § 35; 1982, P.L. 33, § 14; P.L. 167-1984, § 72; P.L. 12-1992, § 135.]

NOTES TO DECISIONS

Section Not Binding on Courts.

Superior courts exercising small claims jurisdiction are not required to adopt the provisions of this section although any particular

superior court may do so pursuant to Trial Rule 81. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-10.5-8-2. Clerk and sheriff — Duties — Bailiff, reporter and other employees. — (a) The clerk and sheriff of the county shall serve as the clerk and sheriff of the county court. The clerk and sheriff shall attend the court and discharge all duties pertaining to their respective offices as required by law in circuit courts of the state of Indiana. The clerk shall permit cases to be filed in any normal weekday whether or not the county court judge is sitting in the county on that day. All instruments requiring the signature of the clerk in the county court's business shall be signed as "Clerk of the _____ County Court."

(b) The judge of the county court shall appoint a bailiff and a reporter and such other employees as are necessary to carry out the business of the court. [IC 33-10.5-8-2, as added by Acts 1975, P.L. 305, § 48.]

Cited: *Hale v. Smith*, 271 Ind. 92, 69 Ind. Dec. 578, 390 N.E.2d 645 (1979).

NOTES TO DECISIONS

ANALYSIS

In general.

Appointment of other employees.

ness and to make the actions of the courts more comprehensible to the parties litigant. *Reynolds v. Meehan*, 176 Ind. App. 385, 375 N.E.2d 1119, 62 Ind. Dec. 387 (1978).

In General.

The legislative intent was to make access to the judicial system easier and less expensive for citizens of the state, particularly in actions involving small amounts, but it is equally important that participants be provided with sufficient procedural protection to insure fair-

Appointment of Other Employees.

The county court of Lake County had no power to appoint a court commissioner and mandate a salary allowance. *Lake County Council v. Arrendondo*, 266 Ind. 318, 363 N.E.2d 218, 57 Ind. Dec. 469 (1977).

33-10.5-8-3. Expenses. — (a) The county shall furnish all supplies, including all blanks, forms, and papers of every kind required for use in all cases, and all furniture, books, papers, stationery, recording devices, and other equipment and supplies of every character necessary for the keeping of the records of the proceedings and maintaining of the county court.

(b) The county shall provide a suitable place or places for the holding of the court for the judge of the county court sitting in the county. The county shall pay the salary of the deputy clerk, county police officer, bailiff, and reporter assigned to the county court as prescribed by law. [IC 33-10.5-8-3, as added by Acts 1975, P.L. 305, § 48; 1976, P.L. 132, § 36; P.L.131-1983, § 7.]

Cited: Hale v. Smith, 271 Ind. 92, 69 Ind. Dec. 578, 390 N.E.2d 645 (1979); J.A.W. v. State, 650 N.E.2d 1142 (Ind. App. 1995).

33-10.5-8-4. Schedule coordination of county court judge and circuit judge. — If the county court judge serves two (2) counties which coincides [coincide] with the boundaries of a joint judicial circuit, he shall coordinate his schedule with that of the circuit judge to insure, as far as practicable, the location of a full time judge in each county. [IC 33-10.5-8-4, as added by Acts 1975, P.L. 305, § 48.]

Compiler's Notes. The bracketed word "coincide" in this section was inserted by the compiler.

33-10.5-8-5 — 33-10.5-8-12. [Repealed.]

Compiler's Notes. These sections, concerning costs, payments to townships in lieu of justice court profits, costs of small claims, misdemeanors and infractions, the payment and disposition of these costs and the distribution of prosecutor's fees, were repealed by Acts 1980, P.L. 8, § 164, Acts 1982, P.L. 181, § 17, and P.L.171-1984, § 80. For present law, see IC 33-19-3.

CHAPTER 9
SMALL CLAIMS REFEREE

33-10.5-9-1 — 33-10.5-9-8. [Repealed.]

Compiler's Notes. This chapter, concerning a small claims referee for Kosciusko County court, was repealed by P.L.18-1995, § 115, effective January 1, 1997.

CHAPTER 10
MAGISTRATES

SECTION.
33-10.5-10-1. Applicability.
33-10.5-10-2. Appointment of magistrate.

33-10.5-10-1. Applicability. — This chapter applies to the Tippecanoe county court. [P.L.18-1995, § 107.]

33-10.5-10-2. Appointment of magistrate. — (a) The judges of the county court may jointly appoint one (1) full-time magistrate under IC 33-4-7.

(b) The magistrate appointed under this chapter may also serve the Tippecanoe circuit and superior courts.

(c) The magistrate appointed under this chapter continues in office until removed by the judges of the county court. [P.L.18-1995, § 107.]

ARTICLE 11

JUSTICE OF THE PEACE

33-11-1-1 — 33-11-21-2. [Repealed.]

Compiler's Notes. This article, concerning justices of the peace courts, was repealed by

Acts 1975, P.L. 305, § 54. For present law relating to county courts, see IC 33-10.5.

ARTICLE 11.6

MARION COUNTY SMALL CLAIMS COURT

CHAPTER

1. GENERAL PROVISIONS, 33-11.6-1-1 — 33-11.6-1-7.
2. ESTABLISHMENT OF DIVISIONS IN TOWNSHIPS, 33-11.6-2-1 — 33-11.6-2-5.
3. JUDGES OF SMALL CLAIMS COURTS, 33-11.6-3-1 — 33-11.6-3-15.
4. JURISDICTION, RULES AND PROCEDURES, 33-11.6-4-1 — 33-11.6-4-15.
5. POWERS, 33-11.6-5-1 — 33-11.6-5-4.

CHAPTER

6. [REPEALED.]
7. TRANSFER OF CASES, CHANGE OF JUDGE, ABSENT JUDGE, 33-11.6-7-1 — 33-11.6-7-6.
8. FACILITIES, PERSONNEL, 33-11.6-8-1 — 33-11.6-8-4.
9. RECORDS, REPORTS, ACCOUNTING, 33-11.6-9-1 — 33-11.6-9-5.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 33-11.6-1-1. Gender and number.
- 33-11.6-1-2. Judge.
- 33-11.6-1-3. Creation.
- 33-11.6-1-4. Not a court of record.

SECTION.

- 33-11.6-1-5. Divisions.
- 33-11.6-1-6. Terms of court.
- 33-11.6-1-7. Assistance from circuit court judge.

33-11.6-1-1. Gender and number. — As used in this article the masculine gender includes the feminine and, where appropriate, the singular number includes the plural and the plural includes the singular. [IC 33-11.6-1-1, as added by Acts 1975, P.L. 313, § 1.]

Valparaiso University Law Review. Private Judging: An Effective And Efficient Al-

ternative to the Traditional Court System, 21 Val. U.L. Rev. 681 (1987).

NOTES TO DECISIONS

Constitutionality.

This article is a deviation from the legislative attempt at uniformity in small claims litigation, but is constitutionally acceptable

since it does not confound the existing court system. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-11.6-1-2. Judge. — As used in this article, “judge” means the judge of the small claims court, unless otherwise indicated. [IC 33-11.6-1-2, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-1-3. Creation. — There is hereby created and established a small claims court in each county containing a consolidated city of the first class. The name of the court shall be the “_____ County Small Claims Court” (insert the name of the county in the blank). Such court shall become operational on January 1, 1976. [IC 33-11.6-1-3, as added by Acts 1975, P.L. 313, § 1.]

Compiler’s Notes. According to IC 36-4-1-1 and the 1990 federal census, Marion County is the only county containing a city of the first class.

33-11.6-1-4. Not a court of record. — The small claims court shall not be a court of record. [IC 33-11.6-1-4, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-1-5. Divisions. — The small claims court shall be composed of one or more divisions. There shall be a division for each township within the county, except that a township, in which there is a population of less than fifteen thousand (15,000) persons according to the last United States decennial census, may decide not to have a division within the township. The designation of each division shall be “_____ Division” (Insert the name of the township in which the division is located). [IC 33-11.6-1-5, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-1-6. Terms of court. — The small claims court shall have no term of court, but shall meet in continuous session. [IC 33-11.6-1-6, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-1-7. Assistance from circuit court judge. — The judge of the circuit court shall extend aid and assistance to the judges in the conduct of their divisions of the small claims court. [IC 33-11.6-1-7, as added by Acts 1975, P.L. 313, § 1.]

CHAPTER 2

ESTABLISHMENT OF DIVISIONS IN TOWNSHIPS

SECTION.	SECTION.
33-11.6-2-1. Division of court in each township — Rejection by certain townships.	_____ment of small claims court.
33-11.6-2-2. Full-time or part-time divisions.	33-11.6-2-4. Notice of hearings.
33-11.6-2-3. Hearing concerning establish-	33-11.6-2-5. Order concerning establishment of small claims court.

33-11.6-2-1. Division of court in each township — Rejection by certain townships. — Each township shall have a division of the court designated to the township; however, as provided in IC 33-11.6-1-5, certain townships may reject having a small claims court division. Such a rejection shall be made by a majority vote of the township board of the respective township, pursuant to the hearing provided in section 3 [IC 33-11.6-2-3] of this chapter. If the township rejects the establishment of a court in the township, a subsequent hearing may be undertaken to elect to establish a

court. This hearing shall meet the requirements of section 3 of this chapter and shall be heard on the third Tuesday in May of the year immediately preceding the year in which a judge for such a court would be elected with the other small claims court judges for the county. [IC 33-11.6-2-1, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 95; P.L.8-1987, § 75.]

33-11.6-2-2. Full-time or part-time divisions. — Each division of the small claims court shall be a full-time division or a part-time division as the individual township boards shall determine following the hearing provided for in section 3 [IC 33-11.6-2-3] of this chapter. [IC 33-11.6-2-2, as added by Acts 1975, P.L. 313, § 1; P.L.8-1987, § 76.]

33-11.6-2-3. Hearing concerning establishment of small claims court. — In the year 1975, a hearing was conducted to obtain evidence, opinions, advice, and suggestions from public officials and the general public on the question of whether a small claims court division should be established in the township, in each township with a population of less than fifteen thousand (15,000) persons, and whether the division should be full-time or part-time, the location of the division courtroom and offices, and other relevant matters. [IC 33-11.6-2-3, as added by Acts 1975, P.L. 313, § 1; P.L.8-1987, § 77.]

Cross References. Subsequent hearings authorized in certain townships, IC 33-11.6-2-1.

33-11.6-2-4. Notice of hearings. — The township trustee shall give ten (10) days notice of all hearings held pursuant to section 3 [IC 33-11.6-2-3] of this chapter in one (1) or more newspapers of general circulation in the county. [IC 33-11.6-2-4, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-2-5. Order concerning establishment of small claims court. — Within two (2) weeks following a hearing held pursuant to section 3 [IC 33-11.6-2-3] of this chapter the township board shall, after considering the evidence, opinions, advice, and suggestions presented at the hearing, enter an order as to whether a small claims court division shall be established in the township if such township has a population of less than fifteen thousand (15,000) persons, whether the division, if any, shall function full-time or part-time, the location of the division courtroom and offices pursuant to IC 33-11.6-8-1, and other relevant matters. [IC 33-11.6-2-5, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 96; P.L.8-1987, § 78.]

CHAPTER 3

JUDGES OF SMALL CLAIMS COURTS

SECTION.

33-11.6-3-1. Selection.

33-11.6-3-2. Qualifications.

33-11.6-3-3. [Repealed.]

SECTION.

33-11.6-3-4. Regular term.

33-11.6-3-5. Hours of service.

33-11.6-3-6. Salary.

SECTION.
33-11.6-3-7. Payment of salary.
33-11.6-3-8. Other employment by full-time
and part-time judges — Prac-
tice of law.
33-11.6-3-9. Retirement.
33-11.6-3-10. Vacations.

SECTION.
33-11.6-3-11. Discipline.
33-11.6-3-12. Oath.
33-11.6-3-13. Bond.
33-11.6-3-14. Seal.
33-11.6-3-15. Resignation.

33-11.6-3-1. Selection. — Each judge of the small claims court shall be elected at the general election in 1986 and every four (4) years thereafter by the registered voters residing within the township in which the division of the small claims court is located. [IC 33-11.6-3-1, as added by Acts 1975, P.L. 313, § 1; 1982, P.L. 192, § 1; P.L.5-1986, § 25.]

33-11.6-3-2. Qualifications. — Each judge of the small claims court must meet the qualifications prescribed by IC 3-8-1-30. [IC 33-11.6-3-2, as added by Acts 1975, P.L. 313, § 1; P.L.5-1986, § 26.]

33-11.6-3-3. [Repealed.]

Compiler's Notes. This section, concerning the initial appointment and term of judges of township small claims courts, was repealed by Acts 1981, P.L. 272, § 146. For present law on terms of small claims court judges, see IC 33-11.6-3-4.

33-11.6-3-4. Regular term. — The term of office of a judge of a small claims court is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified. [IC 33-11.6-3-4, as added by Acts 1975, P.L. 313, § 1; P.L.5-1986, § 27.]

33-11.6-3-5. Hours of service. — The circuit court judge may establish a regular hourly schedule for the performance of duties by full-time or part-time divisions of small claims courts, and each small claims court judge shall maintain that schedule. If the circuit court judge does not establish a regular hourly schedule, each small claims court judge shall perform his duties at regular, reasonable hours. Whether or not a regular hourly schedule has been established by the circuit court judge, a small claims court judge shall hold sessions in addition to his regular schedule whenever the business of his division requires such sessions. [IC 33-11.6-3-5, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-6. Salary. — (a) Within each county the salary of a member of a small claims court who serves full time shall be in an amount determined by the township board of the township in which the small claims court is located.

(b) The salary of each member of the small claims court who serves part time shall be in an amount determined by the township board and approved by the county council.

(c) The salary of a member of the small claims court shall not be reduced during his term of office.

(d) At any other time, salaries of any full-time or part-time member of a small claims court may be increased or decreased by the township board of

the township in which the small claims court is located. [IC 33-11.6-3-6, as added by Acts 1975, P.L. 313, § 1; P.L.8-1987, § 79; P.L.40-1990, § 48; P.L.18-1995, § 108.]

Cited: State ex rel. Huppert v. Paschke,
637 N.E.2d 150 (Ind. App. 1994).

33-11.6-3-7. Payment of salary. — The annual salary of each judge shall be paid in twelve (12) equal monthly installments by the township trustee. The judge may receive no remuneration other than a salary set under section 6 [IC 33-11.6-3-6] of this chapter for the performance of his official duties except payments for performing wedding ceremonies. [IC 33-11.6-3-7, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-8. Other employment by full-time and part-time judges — Practice of law. — (a) A judge serving part-time may participate in other gainful employment so long as such employment does not interfere with the exercise of his judicial office or involve any conflict of interest in the carrying out of his judicial duties.

(b) A judge serving full-time who is an attorney may practice the profession of law only insofar as it does not conflict in any way with his official duties and in particular does not cause him to be unduly absent from his court or interfere with the ready and prompt disposal of his judicial duties. [IC 33-11.6-3-8, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-9. Retirement. — The judges of the small claims court and the employees of the court may be eligible to participate in the public employees' retirement fund as provided in IC 5-10.3, but shall not be eligible to participate as a member in the judges' retirement fund under IC 33-13. [IC 33-11.6-3-9, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 97; P.L.293-1985, § 5.]

33-11.6-3-10. Vacations. — A vacation of one (1) month per year shall be provided for each judge who serves in a full-time capacity. The circuit court judge may authorize the appointment of a judge pro tem to handle the current judicial business of the vacationing judge, if he deems it necessary. [IC 33-11.6-3-10, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-11. Discipline. — All judges shall be subject to disciplinary action for the grounds and in the manner set forth in IC 33-2.1-6. The commission on judicial qualifications for judges of the superior and probate courts is the commission on judicial qualifications for the judges of the small claims courts. [IC 33-11.6-3-11, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 98.]

33-11.6-3-12. Oath. — Before assuming his duties, each judge shall take an oath that he will faithfully perform the duties of his office and support and defend to the best of his ability the constitution and laws of the state

and of the United States of America. [IC 33-11.6-3-12, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-13. Bond. — Each judge shall furnish a bond in such sum as may be required by the circuit court judge and it shall be conditioned for the faithful discharge of the duties of the office, and for the payment or delivery to the proper persons of whatever money or other property may come into his hands as judge. The bond shall then be filed with the county recorder. Said bond shall also extend to cover any person that is duly appointed to act as judge pursuant to IC 33-11.6-7-4. [IC 33-11.6-3-13, as added by Acts 1975, P.L. 313, § 1; Acts 1976, P.L. 139, § 1.]

33-11.6-3-14. Seal. — Each judge shall procure a seal that will stamp upon paper a distinct impression of words and letters. The seal shall contain the words “_____ County Small Claims Court, _____ Division” (insert the name of the county and the name of the township in the appropriate blanks). Deeds, mortgages, powers of attorney, state warrants and all other instruments of writing pertaining to his official duty, duly attested by the seal and signature of the judge, shall be presumptive evidence of the official character of said court or judge in all courts in the state without further authentication. [IC 33-11.6-3-14, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-3-15. Resignation. — (a) The resignation of any judge shall be delivered to the clerk of the circuit court who shall advise the circuit court and appropriate township board.

(b) A vacancy occurring in a judgeship shall be filled under IC 3-13-10. [IC 33-11.6-3-15, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 99; P.L.5-1986, § 28; P.L.8-1987, § 80.]

CHAPTER 4

JURISDICTION, RULES AND PROCEDURES

SECTION.

- 33-11.6-4-1. Coextensive with boundaries of county.
- 33-11.6-4-2. Contracts or torts.
- 33-11.6-4-3. Possessory actions.
- 33-11.6-4-4. Jurisdiction denied.
- 33-11.6-4-5. Adoption of rules.
- 33-11.6-4-6. Establishment of simplified procedure.
- 33-11.6-4-7. Service of process.
- 33-11.6-4-8. Trial.

SECTION.

- 33-11.6-4-9. No trial by jury.
- 33-11.6-4-10. Waiver of trial by jury — Notice must include statement.
- 33-11.6-4-11. Judicial notice of ordinances.
- 33-11.6-4-12. Satisfaction of judgment.
- 33-11.6-4-13. Judgments are liens on real property.
- 33-11.6-4-14. Appeals.
- 33-11.6-4-15. Court costs.

33-11.6-4-1. Coextensive with boundaries of county. — The jurisdiction of the small claims court, and each of its divisions, shall extend throughout the county. [IC 33-11.6-4-1, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-4-2. Contracts or torts. — The court shall have original and concurrent jurisdiction with the circuit and superior courts in all civil cases

founded on contract or tort in which the debt or damage claimed does not exceed six thousand dollars (\$6,000), not including interest or attorney fees. [IC 33-11.6-4-2, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 284, § 2; P.L.167-1984, § 73; P.L.40-1990, § 49; P.L.16-1995, § 8.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 8 provided that the amendment take effect January 1, 1996.

Cited: Clark v. Richardson, 444 N.E.2d 868 (Ind. App. 1983).

33-11.6-4-3. Possessory actions. — The court shall have original and concurrent jurisdiction with the circuit and superior courts in possessory actions between landlord and tenant in which the past due rent at the time of filing does not exceed six thousand dollars (\$6,000). The court shall also have original and concurrent jurisdiction with the circuit and superior courts in actions for the possession of property where the value of the property sought to be recovered does not exceed six thousand dollars (\$6,000). These jurisdictional limitations shall not be affected by interest and attorney fees. [IC 33-11.6-4-3, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 284, § 3; P.L.167-1984, § 74; P.L.40-1990, § 50; P.L.16-1995, § 9.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 9 provided that the amendment take effect January 1, 1996.

33-11.6-4-4. Jurisdiction denied. — The small claims court shall have no jurisdiction in actions seeking injunctive relief or involving partition of real estate, or to declare or enforce any lien thereon except as provided in section 13 [IC 33-11.6-4-4] of this chapter, and shall have no jurisdiction in cases in which the appointment of a receiver is asked, or in suits for dissolution or annulment of marriage. However, the court has jurisdiction to hear petitions filed under IC 34-26-2 (or IC 34-4-5.1 before its repeal). [IC 33-11.6-4-4, as added by Acts 1975, P.L. 313, § 1; P.L.311-1983, § 47; P.L.1-1998, § 184.]

33-11.6-4-5. Adoption of rules. — The judge of the circuit court, assisted by the judges of the small claims court, shall make and adopt uniform rules for conducting the business of the small claims court according to a simplified procedure and in the spirit of sections 6 and 8 [IC 33-11.6-4-6 and IC 33-11.6-4-8] of this chapter. [IC 33-11.6-4-5, as added by Acts 1975, P.L. 313, § 1; P.L.306-1983, § 3.]

33-11.6-4-6. Establishment of simplified procedure. — A simplified procedure shall be established by rule to enable any person, including the state of Indiana, to file the necessary papers and present the person's case in court either to seek or to defend against a small claim without consulting or being represented by an attorney. [IC 33-11.6-4-6, as added by Acts 1975, P.L. 313, § 1; P.L.151-1994, § 1.]

33-11.6-4-7. Service of process. — Upon the filing of a complaint, service of original process shall first be made by personal service of the summons and complaint on the defendant. If such service shall prove unsatisfactory, then service of process shall be made in an alternate manner as provided by the Indiana Rules of Civil Procedure. Subsequent service of process, other than that originally served upon filing of the complaint, may be made by registered or certified mail or such other manner as may be authorized by the Indiana Rules of Civil Procedure. Personal service may include leaving a copy of the service at the last known place of residence of the party so long as the process-server properly describes on the return the residence, noting any of its unique features. In addition, the process-server shall mail (first class) a copy of the service without charge to the party at the same last known place of residence. [IC 33-11.6-4-7, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-4-8. Trial. — The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence, except such provisions relating to privileged communications and offers of compromise. [IC 33-11.6-4-8, as added by Acts 1975, P.L. 313, § 1.]

Cited: Clark v. Richardson, 444 N.E.2d 868 (Ind. App. 1983).

33-11.6-4-9. No trial by jury. — There shall be no trial by jury in the small claims court. [IC 33-11.6-4-9, as added by Acts 1975, P.L. 313, § 1.]

Cited: Clark v. Richardson, 444 N.E.2d 868 (Ind. 1983).

33-11.6-4-10. Waiver of trial by jury — Notice must include statement. — (a) The filing of a civil claim in the small claims court constitutes a waiver of trial by jury by the plaintiff.

(b) The defendant in such a case waives the right to trial by jury unless the defendant requests a jury trial at least three (3) calendar days before the trial date appearing on the notice of claim filed in the small claims court. Upon the filing of a jury trial request, the small claims court shall transfer the claim to the superior court of the county in which the small claims court is located. The defendant shall pay all costs necessary for filing the claim in the superior court as if the cause had initially been filed in that court.

(c) After January 1, 1987, a notice of claim filed in the small claims court must include a statement that reflects the provisions of subsection (b). [IC 33-11.6-4-10, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 284, § 4; P.L.306-1983, § 1; P.L.189-1986, § 1; P.L.16-1995, § 10.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 10 provided that the amendment take effect January 1, 1996.

NOTES TO DECISIONS

ANALYSIS

Jurisdictional limits.

—Transfer to municipal court.

municipal court at the request of the defendant seeking a jury trial the jurisdictional limits of the receiving court apply. *Clark v. Richardson*, 444 N.E.2d 868 (Ind. App. 1983).

Jurisdictional Limits.

—**Transfer to Municipal Court.**

Upon a transfer from small claims to mu-

33-11.6-4-11. Judicial notice of ordinances. — The small claims court shall take judicial notice of municipal, city and town ordinances. [IC 33-11.6-4-11, as added by Acts 1975, P.L. 313, § 1.]

NOTES TO DECISIONS

Constitutionality.

Requiring the court to take judicial notice of ordinances is unconstitutional as being contrary to procedure previously adopted by the

Supreme Court. In re Pub. Law No. 305 & Pub. Law No. 309, 263 Ind. 506, 334 N.E.2d 659, 48 Ind. Dec. 754 (1975).

33-11.6-4-12. Satisfaction of judgment. — If the judgment or order is against the defendant, he shall pay the same forthwith or at any time and upon such terms and conditions as the judge shall prescribe. If the judge orders that the judgment be paid in specified installments, he may stay the issuance of execution and other supplementary process during compliance with such order. The stay may be modified or vacated by the court. [IC 33-11.6-4-12, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-4-13. Judgments are liens on real property. — All judgments rendered in civil actions may be recorded in the judgment docket book of the proper division of the small claims court. Such a judgment shall be a lien on real estate when entered in the circuit court judgment docket in the same manner as a judgment in a court of general jurisdiction becomes a lien on real estate under IC 34-55-9. The clerk of the small claims court shall keep a docket in which judgments shall be entered and properly indexed in the name of the judgment defendant as judgments of circuit courts are entered and indexed. [IC 33-11.6-4-13, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 100; P.L.3-1990, § 116; P.L.1-1998, § 185.]

33-11.6-4-14. Appeals. — All appeals from judgments of the small claims court shall be taken to the superior court of the county and tried de novo. Rules of procedure for appeals shall be in accordance with the rules established by the superior court. The appellant shall pay all costs necessary for the filing of the case in the superior court, as if the appeal were a case that had been filed initially in that court. [IC 33-11.6-4-14, as added by Acts 1975, P.L. 313, § 1; 1978, P.L. 2, § 3303; P.L.306-1983, § 2; P.L.16-1995, § 11.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 11 provided that the amendment take effect January 1, 1996.
Cited: Strube v. Sumner, 67 Ind. Dec. 197,

385 N.E.2d 948 (Ind. App. 1978); Broughton v. Riehle, 512 N.E.2d 1133 (Ind. App. 1987); Maloney v. Cline, 682 N.E.2d 554 (Ind. App. 1997).

- 33-11.6-4-15. Court costs.** — (a) The costs consist of:
- (1) a township docket fee equal to five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2 ;
 - (2) bailiff’s service of process by registered or certified mail fee of six dollars (\$6) for each service;
 - (3) the cost for the personal service of process by the bailiff or other process server in the amount of eight dollars (\$8) for each service, with the exception that personal service to execute a warrant for a protective order under IC 34-26-2 (or IC 34-4-5.1 before its repeal) shall cost a fee of twelve dollars (\$12) and writs of restitution and writs of replevin shall cost a fee of twelve dollars (\$12);
 - (4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; and
 - (5) a redocketing fee, if any, of five dollars (\$5).

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number. [IC 33-11.6-4-15, as added by Acts 1975, P.L. 313, § 1; 1976, P.L. 139, § 2; 1979, P.L. 280, § 8; 1982, P.L. 193, § 1; P.L.311-1983, § 46; P.L.167-1984, § 75; P.L.171-1984, § 61; P.L.189-1986, § 2; P.L.192-1986, § 27; P.L.305-1987, § 23; P.L.40-1990, § 51; P.L.133-1992, § 60; P.L.1-1998, § 186.]

Cross References. Transcript fee for small claims court, IC 33-15-25-2.
Opinions of Attorney General. The Indiana General Assembly has not provided for an exclusively fee-basis official or employee to

participate in the Public Employees’ Retirement Fund even though the local employing political subdivision has elected to participate in the fund. 1980, No. 80-10, p. 33.

CHAPTER 5
POWERS

- SECTION.
33-11.6-5-1. Administration of oaths by judge.
33-11.6-5-2. Witnesses, contempt and enforcement of orders.

- SECTION.
33-11.6-5-3. Issue of process and making of judgments.
33-11.6-5-4. Marriages performed by judge.

33-11.6-5-1. Administration of oaths by judge. — Each judge shall have full authority to administer oaths, take and certify acknowledgements of deeds, and to give all necessary certificates for the authentication of the

records and proceedings of the small claims court. [IC 33-11.6-5-1, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-5-2. Witnesses, contempt and enforcement of orders. — The court shall have the same power as the circuit court in relation to the attendance of witnesses, the punishment of contempts and the enforcing of its orders. [IC 33-11.6-5-2, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-5-3. Issue of process and making of judgments. — A judge of the small claims court, assisted as necessary by the clerk of the circuit court, shall have the power to issue and direct all process to individuals and corporations which shall be necessary in exercising the jurisdiction hereby conferred, and to make all proper judgment, sentences, decrees and orders, and to issue all process, and do all such acts as may be necessary or proper to carry the same into effect in conformity with the laws of this state. [IC 33-11.6-5-3, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-5-4. Marriages performed by judge. — Each judge shall have the power to solemnize marriages. [IC 33-11.6-5-4, as added by Acts 1975, P.L. 313, § 1.]

CHAPTER 6

SURETY OF THE PEACE

33-11.6-6-1 — 33-11.6-6-15. [Repealed.]

Compiler's Notes. This chapter, concerning surety of the peace, was repealed by

P.L.311-1983, § 49. For provisions concerning protective orders, see IC 34-26-2.

CHAPTER 7

TRANSFER OF CASES, CHANGE OF JUDGE, ABSENT JUDGE

SECTION.

33-11.6-7-1. Transfer of cases between divisions.

33-11.6-7-2. Transfer of cases from another court.

SECTION.

33-11.6-7-3. Interchange of judges.

33-11.6-7-4. Judge unable to preside.

33-11.6-7-5. Judge's absence.

33-11.6-7-6. Special judge.

33-11.6-7-1. Transfer of cases between divisions. — The circuit court judge may transfer cases from one (1) division to another as the needs of the small claims court may require. [IC 33-11.6-7-1, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-7-2. Transfer of cases from another court. — A judge of the circuit or superior court may order a cause filed in the judge's court to be transferred to the small claims court if the small claims court has jurisdiction of the cause concurrent with the circuit or superior court and the judge consents to the transfer. [IC 33-11.6-7-2, as added by Acts 1975, P.L. 313, § 1; P.L.16-1995, § 12.]

Effective Dates. P.L.16-1995, § 23, declared an emergency and § 12 provided that the amendment take effect January 1, 1996.

33-11.6-7-3. Interchange of judges. — The judges of the small claims court may interchange and hold court for each other and perform each other's duties at the direction of or with the approval of the circuit court judge and with the consent of the respective judges. [IC 33-11.6-7-3, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-7-4. Judge unable to preside. — If any judge shall be unable to attend and preside over his division of the small claims court during any day or number of days, the judge may appoint, in writing, any person qualified to be a small claims judge pursuant to IC 33-11.6-3-2, to preside during the time such judge is unable to attend and preside. Such written appointment shall be entered on the order book or record of the circuit court, and such appointee shall, after taking the oath prescribed for the judges, conduct the business of such division, subject to the same rules and regulations as judges and shall have the same authority during the continuance of his appointment. Such appointee shall receive the same compensation from the township trustee as accruable to the small claims judge in whose place he is serving. [IC 33-11.6-7-4, as added by Acts 1975, P.L. 313, § 1; 1981, P.L. 272, § 101.]

Cross References. Appointee covered by judge's bond, IC 33-11.6-3-13.

33-11.6-7-5. Judge's absence. — Any judge absenting himself from his office for a longer period than thirty (30) days shall deposit the dockets, books and papers which came to his hands by virtue of his office as directed by the circuit court judge with the small claims judge of another division or with the circuit court. A judge with whom the docket of another may be deposited during vacancy or absence, and the successor of any judge having the dockets of his predecessor in his possession, may issue process thereon, give transcripts thereof, and do all other acts in relation thereto, which he might legally do in relation to his own dockets. Process so issued shall be returned to the judge who may have the legal custody of such docket at the return day thereof. [IC 33-11.6-7-5, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-7-6. Special judge. — No person other than a small claims court judge may serve as a special judge in the small claims court. A small claims court judge serving as a special judge pursuant to this section shall receive, except for mileage and traveling expenses, no compensation in addition to the salary provided in this article. [IC 33-11.6-7-6, as added by Acts 1975, P.L. 313, § 1.]

CHAPTER 8

FACILITIES, PERSONNEL

SECTION.

33-11.6-8-1. Courtroom and office.

33-11.6-8-2. Maintenance — Supplies.

SECTION.

33-11.6-8-3. Clerks.

33-11.6-8-4. Constable — Deputies.

33-11.6-8-1. Courtroom and office. — The courtroom of each division and the office of each judge shall be furnished by the township trustee in a convenient location within the township which has adequate access, sufficient parking facilities, a separate and appropriate courtroom, proper space and facilities for the bailiff, clerks and other employees and enough room for files and supplies. [IC 33-11.6-8-1, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-8-2. Maintenance — Supplies. — Each township shall furnish all supplies, including all blanks, forms, stationery and papers of every kind, required for use in all cases in the township division of the small claims court, and all furniture, books, and other necessary equipment and supplies. The township shall provide for all necessary maintenance and upkeep of the facilities where court is held. [IC 33-11.6-8-2, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-8-3. Clerks. — Each township shall provide at an appropriate and competitive salary of not less than five thousand six hundred dollars (\$5,600) for each of one (1) or more clerks for the township division of the small claims court which number shall be sufficient to enable the township division of the court to operate efficiently and adequately serve the citizens who have or wish to have business with the township division of the court. [IC 33-11.6-8-3, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-8-4. Constable — Deputies. — (a) Each division of the small claims court shall have a constable who shall act as the bailiff of the court and who shall serve the court's personal service of process, and have police powers to make arrests, keep the peace, and carry out the orders of the court. The elected constable may appoint full and part-time deputies to assist him in the performance of his official duties. The deputies may perform all the official duties required to be performed by the constable and they possess the same statutory and common law powers and authority as the constable. The deputies appointed by the constable shall take the same oath that is required of the constable.

(b) Deputies appointed by the constable serve at his pleasure and may be dismissed at any time and without assigning any cause. The constable is responsible for all of the official acts of his deputies. The constable may require a deputy to give a bond, in an amount to be fixed by the constable, for the proper discharge of his duties.

(c) The voters of each township having a small claims court shall elect a constable for the township division of the small claims court at the general election in 1986 and every four (4) years thereafter. The term of office of a

constable is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified. The ballot shall state the name of the candidate and the court division for which the candidate is to serve.

(d) Each constable must meet the qualifications prescribed by IC 3-8-1-31. The constable acting as the bailiff for the court shall be compensated for each process which he delivers to effect personal service. In addition, the constable shall be responsible for the preparation and mailing of all registered or certified service and shall be compensated for each process so mailed. The compensation of the constable and deputy constables shall be paid solely from the service of process fees collected under IC 33-11.6-4-15.

(e) In the event of an emergency or inability of a constable to carry out his duties, the judge may appoint a special constable to carry out the duties of the constable during the emergency or inability. [IC 33-11.6-8-4, as added by Acts 1975, P.L. 313, § 1; 1976, P.L. 139, § 3; 1981, P.L. 272, § 102; 1982, P.L. 193, § 2; P.L.5-1986, § 29.]

Opinions of Attorney General. The Indiana General Assembly has not provided for an exclusively fee-basis official or employee to participate in the Public Employees' Retirement

Fund even though the local employing political subdivision has elected to participate in the fund. 1980, No. 80-10, p. 33.

NOTES TO DECISIONS

ANALYSIS

Employees.
Political affiliation.

tional violation. *Flowers v. Carson*, 917 F. Supp. 614 (S.D. Ind. 1996).

Employees.
Where plaintiff was a personal employee of the constable, not a public employee of the township, even if he was fired because of his political affiliations, there was no constitu-

Political Affiliation.
Because political affiliation is not an appropriate requirement for the position of deputy constable, township and constable were not entitled to qualified immunity in action by dismissed deputy constables. *Flowers v. Carson*, 917 F. Supp. 614 (S.D. Ind. 1996).

CHAPTER 9

RECORDS, REPORTS, ACCOUNTING

SECTION.
33-11.6-9-1. Handling of funds.
33-11.6-9-2. Accounting reports.
33-11.6-9-3. Accounting rules and forms.

SECTION.
33-11.6-9-4. Caseload reports.
33-11.6-9-5. Records.

33-11.6-9-1. Handling of funds. — Payment for all costs and other purposes made as a result of proceedings in a division of the small claims court shall be to the County Small Claims Court Division (with the name of the county and township inserted). The court shall issue a receipt, for all monies received, on a form numbered serially in duplicate. All township docket fees received by the court shall be paid to the township trustees at the close of each month. [IC 33-11.6-9-1, as added by Acts 1975, P.L. 313, § 1; Acts 1976, P.L. 139, § 4.]

33-11.6-9-2. Accounting reports. — Fees, costs and any other amounts collected by the courts shall be accounted for quarterly to the clerk of the

circuit court on March 31, June 30, September 30 and December 31 of each year. [IC 33-11.6-9-2, as added by Acts 1975, P.L. 313, § 1; Acts 1976, P.L. 139, § 5.]

33-11.6-9-3. Accounting rules and forms. — The state board of accounts shall provide rules, in cooperation with the appropriate county officers, to specify the forms and records for the handling of money and other property by or in connection with the small claims court and reporting thereon. [IC 33-11.6-9-3, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-9-4. Caseload reports. — Each judge shall prepare, certify and file quarterly reports on March 31, June 30, September 30, and December 31 of each calendar year with the circuit court judge which shall include the total case filings, terminations, and cases remaining open, broken down by the type of case. The reports shall be in a form approved by and distributed under the direction of the circuit court judge. [IC 33-11.6-9-4, as added by Acts 1975, P.L. 313, § 1.]

33-11.6-9-5. Records. — The judge of the circuit court of the county, with the assistance of the clerk of the circuit court, of the judges and of the state board of accounts, shall, at the expense of the townships, provide the forms, blanks, court calendar books, judgment dockets and fee books, and shall make rules and instructions to direct the judges in keeping records and in making reports. The clerk of the circuit court shall keep full and permanent records and reports of each judge's past and current proceedings, indexed and available for reference as a public record. [IC 33-11.6-9-5, as added by Acts 1975, P.L. 313, § 1.]

ARTICLE 12

JUVENILE COURT

CHAPTER

1, 2. [REPEALED.]

3. COURTS HAVING JUVENILE JURISDICTION, 33-12-3-1 — 33-12-3-4.

CHAPTER 1

BOARD OF COUNTY COMMISSIONERS AUTHORIZED TO PROVIDE FOR JUVENILE COURTS IN CERTAIN COUNTIES

33-12-1-1. [Repealed.]

Compiler's Notes. This chapter, authorizing the board of county commissioners in Marion County to establish a juvenile court, was repealed by Acts 1978, P.L. 136, § 57. The

Marion County Juvenile Court established under this section had been abolished by Acts 1975, P.L. 308, § 3. For present law, see IC 33-5-35.1-4(a)(4).

CHAPTER 2
JUVENILE COURT CREATED IN CERTAIN COUNTIES

33-12-2-1 — 33-12-2-28. [Repealed.]

Compiler's Notes. This chapter, concerning juvenile courts in Allen, Lake, and Marion counties, was repealed by Acts 1978, P.L. 136, § 57.

CHAPTER 3
COURTS HAVING JUVENILE JURISDICTION

SECTION.	SECTION.
33-12-3-1. Circuit courts — Juvenile jurisdiction.	33-12-3-3. Designation of court as juvenile court — Maintenance of separate records.
33-12-3-2. Juvenile jurisdiction in courts other than circuit courts.	33-12-3-4. Adoption of procedural rules.

33-12-3-1. Circuit courts — Juvenile jurisdiction. — A circuit court has juvenile jurisdiction unless this title provides that another court in the same county has exclusive juvenile jurisdiction. [IC 33-12-3-1, as added by Acts 1978, P.L. 136, § 54.]

Cross References. Jurisdiction of juvenile courts, IC 31-30.
St. Joseph County probate court, exclusive juvenile jurisdiction, IC 33-8-2-10.
Superior courts having either exclusive or concurrent juvenile jurisdiction, see cross references to IC 33-12-3-2.
Cited: D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind. App. 1982); P.S. ex rel. Harbin v. W.S., 452 N.E.2d 969 (Ind. 1983).
Collateral References. State court's authority, in marital or child custody proceeding, to allocate federal income tax dependency exemption for child to noncustodial parent under § 152(e) of the Internal Revenue Code (26 USC § 152 (e)). 77 A.L.R.4th 786.

33-12-3-2. Juvenile jurisdiction in courts other than circuit courts. — A court other than a circuit court has juvenile jurisdiction only if:

- (1) This title specifically provides that the court has juvenile jurisdiction; or
- (2) This title provides that the court has the same jurisdiction as a circuit court having juvenile jurisdiction. [IC 33-12-3-2, as added by Acts 1978, P.L. 136, § 54.]

Cross References. Superior courts having juvenile jurisdiction, by county (citations refer to code section granting juvenile jurisdiction):

Allen, IC 33-5-5.1-4.	Huntington, IC 33-5-25.3-3.
Carroll, IC 33-5-9.5-3.	Jackson, IC 33-5-25.4-3.
Clark, IC 33-5-10-2.5.	Knox, IC 33-5-26-6.
Daviess, IC 33-5-10.6-3.	Kosciusko, IC 33-5-27-3.
DeKalb, IC 33-5-10.8-3.	LaGrange, IC 33-5-27.5-3.
Delaware No. 1 and No. 2, IC 33-5-12.1-3.	Lake, IC 33-5-29.5-4.
Dubois, IC 33-5-12.5-3.	LaPorte, IC 33-5-31.1-3.
Elkhart, IC 33-5-13.1-3.	Madison, IC 33-5-33.1-4.
Grant No. 1, IC 33-5-11-11.	Marion, IC 33-5-35.1-4.
Grant No. 2, IC 33-5-19-5.	Marshall, IC 33-5-35.5-3.
Greene, IC 33-5-19.5-3.	Miami, IC 33-5-35.8-3.
Hamilton, IC 33-5-22-5.	Montgomery, IC 33-5-36.6-3.
Hancock, IC 33-5-23-5.	Noble, IC 33-5-37.5-3.
Henry, IC 33-5-21-5.	Ohio and Switzerland, IC 33-5-37.7-3.
	St. Joseph, IC 33-5-40-4.
	Shelby, IC 33-5-39-7.
	Steuben, IC 33-5-40.1-3.
	Sullivan, IC 33-5-40.5-3.

Tippecanoe No. 3, IC 33-5-42.1-3.
 Vanderburgh, IC 33-5-43-5.
 Vigo, IC 33-5-44.1-4.
 Warrick, IC 33-5-45.5-4.
 Wayne No. 1, IC 33-5-46-5.

Wayne No. 2, IC 33-5-47-6.
 Wayne No. 3, IC 33-5-48-3.
 White, IC 33-5-49-3.
 Transfer of cases from circuit court to superior court, IC 33-5-4-2.

33-12-3-3. Designation of court as juvenile court — Maintenance of separate records. — When in session under this article, a court shall be known as the juvenile court. A juvenile court shall maintain its own docket, order book, and records. [IC 33-12-3-3, as added by Acts 1978, P.L. 136, § 54.]

33-12-3-4. Adoption of procedural rules. — A juvenile court may adopt rules to simplify and expedite its own proceedings and decisions. [IC 33-12-3-4, as added by Acts 1978, P.L. 136, § 54.]

ARTICLE 13

JUDGES

CHAPTER

- 1, 2. [REPEALED.]
3. TRAVEL EXPENSES — REIMBURSEMENT IN CERTAIN DISTRICTS, 33-13-3-1.
4. BAILIFF TO BE APPOINTED IN CERTAIN COUNTIES, 33-13-4-1.
5. TERM OF OFFICE OF CERTAIN JUDGES, 33-13-5-1.
6. CHIEF CLERK — APPOINTED BY CIRCUIT COURT JUDGE IN COUNTY WITH A POPULATION OF 400,000 OR MORE, 33-13-6-1.
7. CITY OR MUNICIPAL COURT JUDGE — RECORDATION OF APPOINTMENT, 33-13-7-1.
8. JUDGES' RETIREMENT SYSTEM, 33-13-8-1 — 33-13-8-26.
9. ELIGIBILITY AS CANDIDATE FOR PROBATE OR SUPERIOR JUDGESHIPS, 33-13-9-1.
- 9.1. JUDGES 1977 BENEFIT SYSTEM, 33-13-9.1-1 — 33-13-9.1-10.

CHAPTER

10. [REPEALED.]
- 10.1. JUDGES 1985 BENEFIT SYSTEM, 33-13-10.1-1 — 33-13-10.1-14.
11. [REPEALED.]
12. JUDGES' SALARIES, 33-13-12-1 — 33-13-12-12.
13. [REPEALED.]
14. JUDICIAL CONFERENCE OF INDIANA, 33-13-14-1 — 33-13-14-7.
15. PRIVATE JUDGES, 33-13-15-1 — 33-13-15-9.
16. TEMPORARY JUDGES, 33-13-16-1 — 33-13-16-11.
17. DEFENSE AND INDEMNIFICATION OF JUDGES FOR CIVIL DAMAGES, 33-13-17-1 — 33-13-17-4.

CHAPTER 1

ELECTION OF CERTAIN JUDGES

33-13-1-1 — 33-13-1-3. [Repealed.]

Compiler's Notes. This chapter, concerning election of certain judges, was repealed by P.L.5-1986, § 61.

CHAPTER 2

SUPERIOR COURT JUDGES — ELECTIONS

33-13-2-1, 33-13-2-2. [Repealed.]

Compiler's Notes. This chapter, concerning election of superior court judges, was repealed by P.L.5-1986, § 61.

CHAPTER 3

TRAVEL EXPENSES — REIMBURSEMENT IN CERTAIN DISTRICTS

SECTION.

33-13-3-1. Circuit, county and superior court judges — Appropriation.

33-13-3-1. Circuit, county and superior court judges — Appropriation. — There shall be paid to the judge of each judicial circuit containing more than one (1) county, to the judge of each county court serving more than one (1) county, and to the judge of each superior court district containing more than one (1) county two thousand dollars (\$2,000) per annum, to reimburse such judge for traveling and other necessary expenses, and two thousand dollars (\$2,000) for each such judge is appropriated annually out of any money in the general fund of the state treasury not otherwise appropriated. [Acts 1935, ch. 128, § 1, p. 470; 1953, ch. 25, § 1; 1976, P.L. 132, § 38; Acts 1980, P.L. 187, § 11.]

NOTES TO DECISIONS

Reimbursement for Travel Expenses.

When the travel allowance of \$1,000 [now \$2,000] is insufficient to reimburse a judge of a joint circuit or joint county court for a reasonable number of trips to the second county in pursuit of his official duties, the

judge is entitled to reimbursement for the excess and such excess travel expenses should be divided equally between the two counties without regard to the county where the judge resides. *Levco v. Auditor of State*, 271 Ind. 415, 393 N.E.2d 749, 71 Ind. Dec. 120 (1979).

CHAPTER 4

BAILIFF TO BE APPOINTED IN CERTAIN COUNTIES

SECTION.

33-13-4-1. Appointment and pay — Sheriff to act in certain counties.

33-13-4-1. Appointment and pay — Sheriff to act in certain counties. — The judge of the circuit, superior, criminal, probate and juvenile courts in each county in the state of Indiana having a population of thirty-five thousand (35,000) or more, according to the last preceding United States census, shall appoint a bailiff and may appoint a riding bailiff for his court, whose per diem shall be fixed by the court to be paid out of the county treasury. In counties having a population of less than thirty-five thousand (35,000) according to the last preceding United States census, the judge of the circuit court may appoint a bailiff, but if no bailiff be appointed the sheriff of the county shall perform the duties of the bailiff. [Acts 1921, ch. 146, § 1, p. 372; 1935, ch. 151, § 1, p. 536.]

Compiler's Notes. By the 1990 federal census, counties having a population of 35,000 or more are Allen, Bartholomew,

Boone, Cass, Clark, Dearborn, DeKalb, Delaware, Dubois, Elkhart, Floyd, Grant, Hamilton, Hancock, Hendricks, Henry,

Howard, Huntington, Jackson, Johnson, Knox, Kosciusko, Lake, LaPorte, Lawrence, Madison, Marion, Marshall, Miami, Monroe,

Morgan, Noble, Porter, St. Joseph, Shelby, Tippecanoe, Vanderburgh, Vigo, Wabash, Warrick and Wayne.

CHAPTER 5

TERM OF OFFICE OF CERTAIN JUDGES

SECTION.

33-13-5-1. Commencement and expiration of terms.

33-13-5-1. Commencement and expiration of terms. — The term of office of every person elected judge of the court of appeals or of any circuit, superior, probate, criminal, or juvenile court shall begin on the first day of January next succeeding the person's election. The term of office of all persons who have been elected or appointed to any such judgeship shall expire on December 31 next succeeding the election of their respective successors. [Acts 1925, ch. 105, § 1, p. 278; 1929, ch. 10, § 1, p. 16; P.L.3-1989, § 203.]

Compiler's Notes. This section, so far as it is inconsistent with Acts 1971, P.L. 429 (IC 33-5-5.1) or with the Allen Superior Court and its jurisdiction is specifically repealed by Acts 1971, P.L. 429, § 8, effective December 1, 1971.

This section, so far as it is inconsistent with Acts 1973, P.L. 308 (IC 33-5-29.5-1 et seq.) or with the Superior Court of Lake County and its jurisdiction, is specifically repealed by Acts 1973, P.L. 308, § 2.

Opinions of Attorney General. Because election laws do not provide for filling a vacancy in office (as distinguished from death or resignation of a candidate) which occurs as late as October 11th prior to November general election, names of candidates for such vacancy cannot be placed on the ballot. 1948, No. 63, p. 388.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Objection as to expiration of term.

Constitutionality.

The provision of this section, that the terms of state officers, including circuit judges, hereafter elected, shall begin on January 1 next after the election, held not violative of Ind. Const., art. 5, § 18, where such provision does

not curtail the term of a constitutional office. State ex rel. Middleton v. Scott Circuit Court, 214 Ind. 643, 17 N.E.2d 464 (1938).

Objection as to Expiration of Term.

An objection that a trial judge's term of office had expired before the commencement of the trial cannot be made for the first time in the motion for a new trial. Schafer v. Ort, 202 Ind. 622, 177 N.E. 438 (1931).

CHAPTER 6

CHIEF CLERK — APPOINTED BY CIRCUIT COURT JUDGE IN COUNTY WITH A POPULATION OF 400,000 OR MORE

SECTION.

33-13-6-1. Salary — Powers and duties — Qualifications for office — Appropriation.

33-13-6-1. Salary — Powers and duties — Qualifications for office — Appropriation. — The judge of the circuit court in a county having a

population of four hundred thousand (400,000) or more may appoint in his court a chief clerk, whose salary shall be fixed by the judge of said court, which salary shall not be in excess of forty-eight hundred dollars (\$4,800) per annum, the same to be paid in monthly installments out of the county treasury of the county in which any such court is situated. The chief clerk shall have the power to administer oaths that may be found convenient or necessary to be administered in the discharge of his duties, for which no charge shall be made or expense incurred. Said chief clerk shall be a graduate of an approved law school and shall be duly admitted to the practice of law in the state of Indiana. The county council of any such county shall appropriate such sums of money as may be requested by the presiding judge of the circuit court for payment of the salary of such chief clerk, not exceeding the maximum amount of the salary provided in this section. [Acts 1947, ch. 72, § 1; 1981, P.L. 272, § 103; P.L.12-1992, § 136.]

Compiler's Notes. According to the 1990 federal census, the counties having a population 400,000 or more are Lake and Marion.

CHAPTER 7

CITY OR MUNICIPAL COURT JUDGE — RECORDATION OF APPOINTMENT

SECTION.
33-13-7-1. Certification.

33-13-7-1. Certification. — Whenever, under the laws of this state, any person is appointed by the proper authority as judge of a city or municipal court, a certified copy of such appointment shall be sent by the appointing authority, to the clerk of the circuit court of the county wherein said city is located. Said appointment shall be duly recorded upon the order-book of the circuit court and such record shall authorize the clerk to certify that such judge is the duly appointed, qualified and acting judge of the city or municipal court for which he was appointed. [Acts 1949, ch. 150, § 1.]

CHAPTER 8

JUDGES' RETIREMENT SYSTEM

SECTION.
33-13-8-1. [Repealed.]
33-13-8-2. Definitions.
33-13-8-2.1. "Judge" to include judge of Indiana tax court.
33-13-8-3. Retirement fund — Creation.
33-13-8-3.5. Compliance with Section 401 of Internal Revenue Code.
33-13-8-3.7. Compliance with Americans with Disabilities Act.
33-13-8-4. [Repealed.]
33-13-8-4.1. Participation in fund, contributions, withdrawal, and eligibility for, and computation of benefits — Compliance with federal law.
33-13-8-5 — 33-13-8-14.1. [Repealed.]

SECTION.
33-13-8-15. Social Security — Referendum on coverage — Contributions.
33-13-8-16. Appropriations — Participant's retirement benefits — Administrative purposes.
33-13-8-16.1. Use of appropriations.
33-13-8-17. Trust fund — Purpose.
33-13-8-17.2. Payment of administrative costs.
33-13-8-18 — 33-13-8-20. [Repealed.]
33-13-8-21. Contributions of participants — Deductions from salary — Payment of claims.
33-13-8-22. Contributions of participants — Records of state auditor.
33-13-8-23, 33-13-8-24. [Repealed.]

SECTION.

33-13-8-25. Administration of funds.

33-13-8-26. Election of direct rollover of eligible distributions.

33-13-8-1. [Repealed.]

Compiler's Notes. This section, relating to the creation and the administration of the judges' retirement system, was repealed by

P.L.293-1985, § 14. For present provisions, see IC 33-13-10.1.

33-13-8-2. Definitions. — The following words and phrases as used in this chapter, unless different meanings are plainly indicated by their context, shall have the following respective meanings:

"Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

"His" and "widow" means "her" and "widower" in the event the participant is a woman.

"Fund" means the Indiana judges' retirement fund, the fund created by this chapter.

"Board" means the board of trustees of the public employees' retirement fund.

"Employer" means the state of Indiana.

"Judge" means any person who has served, is serving, or shall serve as a regular judge of any of the following courts:

Supreme court of the state of Indiana.

Court of appeals of the state of Indiana.

Circuit court of any judicial circuit.

Superior court of any county or counties.

Criminal court of any county having a separate criminal court.

Probate court of any county having a separate probate court.

Juvenile court of any county having a separate juvenile court.

Municipal court of any county.

County court of any county or counties.

"Participant" means any judge participating in the fund.

"Services" means the period beginning on the first day upon which any person first became a judge, whether such date is prior or subsequent to March 11, 1953, and ending on the date under consideration, including all intervening employment as a judge, following resignation or expiration of any term of election or appointment. Services in any fraction of a month shall be considered as a month of service. However, no more than one (1) month shall be credited for services in any one (1) calendar month. If a judge is elected or appointed and serves one (1) or more terms or part of a term, then retires from office, but at a later period, or periods, is appointed or elected and serves as judge, the judge shall pay into said fund during all the periods served as judge, except as otherwise provided in this chapter, whether said periods be a connected period or disconnected period, but shall not be required to pay into said fund at any time when the judge is not serving as judge, or during any

period of service as a senior judge under IC 33-4-8, except as otherwise provided in this chapter.

"Fiscal year" means the period beginning on July 1, in any year, and ending on June 30 of the succeeding year.

"Salary" means the total salary paid to any participant by the state of Indiana and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code. [Acts 1953, ch. 157, § 2; 1969, ch. 388, § 1; 1974, P.L. 140, § 1; 1977, P.L. 324, § 1; P.L.4-1983, § 15; P.L.293-1985, § 6; P.L.334-1989(ss), § 31; P.L.4-1992, § 13; P.L.5-1992, § 10.]

Opinions of Attorney General. Subsistence pay is not considered part of current annual salary. 1969, No. 13, p. 43.

33-13-8-2.1. "Judge" to include judge of Indiana tax court. — "Judge," as defined in section 2 [IC 33-13-8-2] of this chapter, includes a person who has served or is serving as a regular judge of the Indiana tax court. [P.L.291-1985, § 17.]

33-13-8-3. Retirement fund — Creation. — An Indiana judges' retirement fund is hereby created and shall consist of:

- (a) Each participant's contribution to said fund;
- (b) All gifts, grants, devises, and bequests in money, property, or other form, which may be made to the fund;
- (c) All interest on investments, or on deposits of the funds; and
- (d) Any contribution or payment to said fund made in any manner provided by the general assembly including appropriations from the general fund of the state as provided by this chapter. [Acts 1953, ch. 157, § 3; 1981, P.L. 272, § 105.]

Cross References. Administration of fund, IC 33-13-8-25.

33-13-8-3.5. Compliance with Section 401 of Internal Revenue Code. — (a) As used in this chapter, IC 33-13-9.1 and IC 33-13-10.1, "Internal Revenue Code":

- (1) Means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or
- (2) To the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter, IC 33-13-9.1, or IC 33-13-10.1:

- (1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter, IC 33-13-9.1, and IC 33-13-10.1.

(2) No part of the corpus or income of the fund may be used or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any participant would otherwise receive under the fund.

(4) If the fund is terminated, or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the participant died.

(6) The board may not:

(A) Determine eligibility for benefits;

(B) Compute rates of contribution; or

(C) Compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) The salary taken into account under this chapter, IC 33-13-9.1, or IC 33-13-10.1 may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code. [P.L.55-1989, § 32.]

33-13-8-3.7. Compliance with Americans with Disabilities Act. —

The board shall administer the fund in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act. [P.L.4-1992, § 14.]

Effective Dates. P.L.4-1992, § 61, provided that the section take effect retroactively to January 26, 1992.

33-13-8-4. [Repealed.]

Compiler's Notes. This section, relating to participants in the judges' retirement system, was repealed by P.L.293-1985, § 14. For present provision, see IC 33-13-10.1-3.

33-13-8-4.1. Participation in fund, contributions, withdrawal, and eligibility for, and computation of benefits — Compliance with federal law. — (a) Conditions for participation in the fund, contributions to the fund, withdrawal from the fund, and eligibility for and computation of

benefits for participants and their survivors are governed by IC 33-13-9.1 and IC 33-13-10.1.

(b) Notwithstanding any provision of this chapter, IC 33-13-9.1, and IC 33-13-10.1, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes.

(c) Notwithstanding any provision of this chapter, IC 33-13-9.1, and IC 33-13-10.1, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.). [P.L.293-1985, § 7; P.L.5-1997, § 12.]

33-13-8-5 — 33-13-8-14.1. [Repealed.]

Compiler's Notes. These sections, relating to the retirement board, retirement benefits, disability of participants, withdrawals from the fund, retirement annuities, and benefits to surviving dependent children of participants, were repealed by Acts 1977, P.L. 324, § 7, P.L.4-1983, § 19, and P.L.293-1985,

§ 14. The retirement fund is now administered by the board of trustees of the public employees' retirement fund. See IC 33-13-8-25. For present provisions as to benefits to surviving dependent children of participants, see IC 33-13-10.1-11.

33-13-8-15. Social Security — Referendum on coverage — Contributions. — (a) The governor is authorized to conduct, or cause to be conducted, a referendum with respect to the judges who are covered by the provisions of the judges' retirement fund, in which referendum the question shall be submitted to such judges of whether the judges covered by such retirement fund shall be excluded from, or included in, the agreement negotiated pursuant to the provisions of Section 218 of the federal Social Security Act. The referendum shall be conducted in full compliance with all the requirements of Section 218(d) of the federal Social Security Act. The governor shall designate the board as the agency to conduct and supervise the referendum, and the expense of taking such referendum shall be paid from funds appropriated to the judges' retirement fund.

(b) If, in any such referendum, the vote of the majority of the judges who are eligible to vote therein is in the negative, a subsequent referendum shall be conducted in the same manner and with the same effect, upon the request of the board of trustees of the judges' retirement fund. However, no such referendum shall be conducted within the period of one (1) year after the taking of a prior referendum.

(c) In the event a majority of the judges, eligible to vote in such referendum, vote in the affirmative, the judges covered by such retirement fund, and those judges who waived their right to be covered by the provisions of such retirement fund, shall be included in the agreement negotiated by the state with the Secretary of Health and Human Services of the United States, in the manner provided in IC 5-10.1-4 for the inclusion in

such agreement of services covered by the retirement systems specified in IC 5-10.1-4-1.

(d) Every judge whose services are so covered by social security shall be required to pay, for the period of such service, the amounts that are required as employee contributions by said agreement. The contributions shall commence as of the effective date of such coverage and shall be subject to all of the terms and conditions of IC 5-10.1 with respect thereto.

(e) The employer contributions required under such agreement shall be wholly paid by the auditor of state from funds appropriated to the judges' retirement fund, and shall begin as of the effective date of the applicable modification of the federal-state agreement by which the judges of such retirement fund are included therein. The employer contributions shall be paid in the manner provided in said agreement.

(f) The modification of the federal-state agreement to effectuate the participation of the judges in the agreement shall be effective, with respect to services performed, on a date to be fixed and determined by the board. [Acts 1953, ch. 157, § 14a, as added by Acts 1957, ch. 234, § 1; 1981, P.L. 272, § 109; P.L.4-1983, § 16; P.L.293-1985, § 8; P.L.57-1987, § 5.]

Compiler's Notes. Section 218 of the federal Social Security Act, referred to in subsection (a), may be found at 42 U.S.C. 418.

33-13-8-16. Appropriations — Participant's retirement benefits — Administrative purposes. — (a) For the purposes of this chapter, there shall be appropriated for each biennium a sum of money, computed on an actuarially funded basis, as follows:

(1) From the state general fund for participants' retirement benefits the amount determined by the board, on recommendation of an actuary, which, when added to the portion of the fund held for benefits at the date of such appropriation, shall be equal to the aggregate liability of the fund for benefits to the end of the biennium.

(2) From the earnings on the fund, for administration purposes, the amount required during the biennium, as determined by the board on the basis of experience. The amount required for administration shall be paid out as the operating expenses of other state departments are paid.

(b) The biennial appropriation provided in this section shall be credited to the board annually in equal installments in the month of July of each year of the biennium. [Acts 1953, ch. 157, § 15; 1981, P.L. 272, § 110; P.L.47-1985, § 8.]

NOTES TO DECISIONS

County Salary Supplements.

The amount of retirement benefits each judge receives is determined by a judge's salary, and if retirement benefits were also based on the county salary supplement, decisions made at the county level to pay the judge a supplement would affect the size of

the state's appropriation required to meet any shortfall in the retirement fund, and the legislature did not intend to relinquish to Indiana's 92 counties such control over the states's general fund. *Mance v. Board of Dirs. of Pub. Employees' Retirement Fund*, 652 N.E.2d 532 (Ind. App. 1995).

33-13-8-16.1. Use of appropriations. — The amount appropriated under section 16 [IC 33-13-8-16] of this chapter for participants' retirement benefits shall be used for retirement benefits under both IC 33-13-9.1 and IC 33-13-10.1. [P.L.293-1985, § 9.]

33-13-8-17. Trust fund — Purpose. — The fund created under this chapter shall be construed to be a trust, separate and distinct from all other entities, maintained for the purpose of securing payment of benefits to the participants and their beneficiaries, as prescribed in IC 33-13-9.1 and IC 33-13-10.1. [Acts 1953, ch. 157, § 16; 1981, P.L. 272, § 111; P.L.293-1985, § 10.]

Cross References. Administration of fund, IC 33-13-8-25.

33-13-8-17.2. Payment of administrative costs. — In addition to the purpose set forth in section 17 [IC 33-13-8-17] of this chapter, the fund may be used for the payment of the costs of administering this chapter. [P.L.47-1985, § 9.]

33-13-8-18 — 33-13-8-20. [Repealed.]

Compiler's Notes. These sections, concerning the establishment date and organization period of the judges' retirement fund and powers and duties of the retirement board and the state treasurer, were repealed by Acts

1981, P.L. 272, § 146 and P.L.4-1983, § 19. The fund is now administered by the board of trustees of the public employees' retirement fund. See IC 33-13-8-25.

33-13-8-21. Contributions of participants — Deductions from salary — Payment of claims. — The auditor of state and the county auditor in drawing warrants for any items of salary of any participant, shall draw such warrants to participants less the employees' contributions to the fund, if any, to be deducted therefrom as shall be certified in the vouchers, or order issued by the director, and shall draw a warrant for the total amount of contributions so withheld from the participants each month, to this fund. The warrant drawn to this fund, together with a list of participants from whom withheld and the amount from each shall be transmitted immediately to the director of the board. The auditor of state is authorized and directed to draw warrants upon the state treasurer, payable from the funds created by this chapter, for purposes provided for in this chapter, upon the presentation of vouchers or order signed by the director of the board, in accordance with resolutions of the board. [Acts 1953, ch. 157, § 20; 1974, P.L. 140, § 4; 1977, P.L. 324, § 4; P.L.5-1990, § 18.]

33-13-8-22. Contributions of participants — Records of state auditor. — The auditor of state and the county auditor are hereby authorized and directed in the preparation of all warrants covering payments of salary to participants for employment to indicate in addition to other things:

- (a) The amount of employee contributions to the fund, which are to be deducted from the salary of such participant, included in each such payroll voucher.
- (b) The net amount payable to each such participant, after the deduction of such contribution. [Acts 1953, ch. 157, § 21; 1974, P.L. 140, § 5; 1977, P.L. 324, § 5.]

33-13-8-23, 33-13-8-24. [Repealed.]

Compiler's Notes. These sections, concerning investments, and prohibition of making of false statements or falsification of retirement system records in an attempt to defraud the retirement system, were repealed

by Acts 1978, P.L. 2, § 3308 and P.L.4-1983, § 19. For present law, see IC 35-43-5-2 (forgery), IC 35-43-5-3 (deception), IC 35-44-2-1 (perjury), and IC 35-44-3-4 (tampering).

33-13-8-25. Administration of funds. — (a) The board of trustees of the public employees' retirement fund shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall:

- (1) Determine eligibility for and make payments of benefits under IC 33-13-9.1 and IC 33-13-10.1;
- (2) In accordance with the powers and duties granted it in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund; and
- (3) Provide by rule for the implementation of this chapter and IC 33-13-9.1 and IC 33-13-10.1.

(c) A determination by the board may be appealed under the procedures in IC 4-21.5.

(d) The powers and duties of the director and the actuary of the board, the treasurer of state, the attorney general, and the auditor of state, with respect to the fund, are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(e) The board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter. [IC 33-13-8-25, as added by P.L.4-1983, § 17; P.L.293-1985, § 11; P.L.7-1987, § 164; P.L.5-1990, § 19.]

33-13-8-26. Election of direct rollover of eligible distributions. — Notwithstanding any other provision of this chapter, IC 33-13-9.1, or IC 33-13-10.1, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L. 102-318), and any amendments and regulations related to Section 401(a)(31), the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan. [P.L.10-1993, § 12.]

CHAPTER 9

ELIGIBILITY AS CANDIDATE FOR PROBATE OR SUPERIOR JUDGESHIPS

SECTION.

33-13-9.1. Additional prerequisites of eligibility.

33-13-9.1. Additional prerequisites of eligibility. — A person is not eligible to hold the office of judge of any probate or superior court unless, in addition to other prerequisites to eligibility provided by the laws of this state, the person is admitted to the practice of law in Indiana. [Acts 1953, ch. 254, § 1; P.L.3-1987, § 539; P.L.5-1989, § 84.]

CHAPTER 9.1

JUDGES 1977 BENEFIT SYSTEM

SECTION.

33-13-9.1-1. Applicability of chapter.
 33-13-9.1-2. Definitions.
 33-13-9.1-3. Participation in fund.
 33-13-9.1-4. Entitlement to annuity —
 Amount of benefit — Surviving spouse's annuity.
 33-13-9.1-5. Permanent disability.
 33-13-9.1-6. Withdrawal from fund.
 33-13-9.1-7. Amount owed spouse, dependent, or estate upon death of participant.

SECTION.

33-13-9.1-8. Annuity of dependent child.
 33-13-9.1-9. Determination of benefit limitations under Internal Revenue Code.
 33-13-9.1-10. Applicability of section —
 Credit for prior service — Amortization schedule for contributions.

33-13-9.1-1. Applicability of chapter. — This chapter applies only to an individual who begins service as a judge before September 1, 1985. [P.L.293-1985, § 12.]

33-13-9.1-2. Definitions. — As used in this chapter, the following terms have the meanings set forth for them in IC 33-13-8-2:

Americans with Disabilities Act
 Board
 Employer
 Fund
 Participant
 Salary
 Services

[P.L.293-1985, § 12; P.L.4-1992, § 15.]

Effective Dates. P.L.4-1992, § 61, provided that the amendment take effect retroactively to January 26, 1992.

33-13-9.1-3. Participation in fund. — (a) Each person who completed at least eight (8) years of service as a judge prior to July 1, 1953, may become a participant in the fund and be subject to the provisions of this chapter if the person qualifies for benefits under section 4 [IC 33-13-9.1-4] of this chapter. Each person who is a judge on July 1, 1953, shall become a

participant in the fund and be subject to the provisions of this chapter, beginning upon such date, unless twenty (20) days prior to such date such judge has filed with the board a written notice of election not to participate in the fund.

(b) Each person who becomes a judge after July 1, 1953, and before September 1, 1985, and who is then not a participant, shall become a participant in the fund and be subject to this chapter, beginning upon the date such person becomes a judge, unless within twenty (20) days after that date such judge has filed with the board a written notice of election not to participate in the fund. An election filed under this subsection is irrevocable.

(c) Each person irrevocably electing not to participate or withdrawing under section 6 [IC 33-13-9.1-6] of this chapter is thereafter ineligible to participate and to receive benefits under this chapter.

(d) Participation of each judge in the fund shall continue until the date upon which such judge becomes an annuitant, dies, or accepts a refund, but no person shall be required to pay into the fund during any period that the person is not serving as a judge, except as otherwise provided in this chapter.

(e) Each participant is deemed to have made a one-time irrevocable salary reduction agreement equal to six percent (6%) of each payment of salary which would otherwise have been received by such participant for services as judge, which amounts shall be paid by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-13-8-21 and IC 33-13-8-22. However, no such amounts shall be paid on behalf of any participant for more than twenty-two (22) years. [P.L.293-1985, § 12; P.L.55-1989, § 33.]

33-13-9.1-4. Entitlement to annuity — Amount of benefit — Surviving spouse's annuity. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 9 [IC 33-13-9.1-9] of this chapter.

(b) Any participant whose employment as judge by the employer is terminated, regardless of cause, shall be entitled to a retirement annuity beginning on the date specified by such participant in a written application therefor, if all the following conditions are met:

(1) The date upon which the annuity begins is not prior to the date of final termination of employment of such participant, or the date thirty (30) days prior to the receipt of such application by the board.

(2) The participant:

(A) Has attained at least the age of sixty-two (62) and has at least eight (8) years of service credit; or

(B) Has become permanently disabled.

(3) The participant is not receiving any salary from the state for services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

(c) The amount of the annual retirement benefit to which a participant who elects to accept retirement after June 30, 1977, and who has attained at least age sixty-five (65) years is entitled equals the product of:

(1) The salary being paid for the office which the participant held at the time of the participant's separation from service; multiplied by

(2) The percentage prescribed in the following table:

TABLE A	
Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. The amount of the annual retirement benefit to which a participant who elects to accept retirement before July 1, 1977, is entitled equals the average of the benefit computed under this subsection and the benefit the participant would have received under IC 33-13-8 as in effect on June 30, 1977.

(d) If the annual retirement benefit of a participant who began service as a judge before July 1, 1977, as computed under subsection (c), is less than the amount the participant would have received under IC 33-13-8 as in effect on June 30, 1977, the participant is entitled to receive that greater amount as the participant's annual retirement benefit instead of the benefit computed under subsection (c).

(e) If a participant who elects to accept retirement after June 30, 1977, has not attained age sixty-five (65) years, the participant is entitled to receive a reduced annual retirement benefit which equals the benefit which would be payable if the participant were age sixty-five (65) reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) Participants who are separated from service because of permanent disability.
- (2) Survivors of participants who die while in service after August 1, 1992; or
- (3) Survivors of participants who die while not in service but while entitled to a future benefit.

(f) The amount of the annual benefit to which a participant who has become permanently disabled is entitled equals the product of:

- (1) The salary being paid for the office which the participant held at the time of separation from service; multiplied by
- (2) The percentage prescribed in the following table:

TABLE B	
Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(g) The surviving spouse or surviving child or children, as designated by the participant, of any participant who has qualified before July 1, 1977, to receive the retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, shall, upon the death of such participant, be entitled to an annuity in an amount equal to the greater of:

- (1) The sum of:
 - (A) Two thousand dollars (\$2,000); plus
 - (B) Fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of the participant's death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits prior to the participant's death; or
- (2) The amount determined under the following table:

TABLE C	
Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(h) If a participant who qualifies after June 30, 1977, and before July 1, 1983, to receive a retirement annuity under the provisions of this chapter,

either by length of service or by being permanently disabled, dies, the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled to an annuity in an amount equal to the greater of:

- (1) Fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before death; or
 - (2) The amount determined under TABLE C in subsection (g)(2).
- (i) If a participant:
- (1) Dies after June 30, 1983; and
 - (2) On the date of the participant's death:
 - (A) Was receiving benefits under this chapter;
 - (B) Had completed at least eight (8) years of service and was in service as a judge;
 - (C) Was permanently disabled; or
 - (D) Had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;

the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled, regardless of the participant's age, to an annuity in an amount equal to the greater of the amount determined under TABLE C in subsection (g)(2) or fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits on the participant's date of death, with reductions as necessary under subsection (e).

- (j) Notwithstanding subsection (i), if a participant:
- (1) Died after June 30, 1983, and before July 1, 1985; and
 - (2) Was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the surviving spouse of a permanently disabled participant entitled to benefits under subsection (h).

(k) The annuity payable to a surviving child or children under subsection (g), (h), or (i) is subject to the following:

- (1) The total monthly benefit payable to a surviving child or children is equal to the same monthly annuity that was to have been payable to the surviving spouse.
- (2) If there is more than one (1) child designated by the participant, then the children are entitled to share the annuity in equal monthly amounts.
- (3) Each child entitled to an annuity shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.
- (4) Upon the cessation of payments to one (1) designated child, if there is at least one (1) other child then surviving and still entitled to payments, the remaining child or children shall share equally the annuity. If the surviving spouse of the participant is surviving upon the

cessation of payments to all designated children, the surviving spouse will then receive the annuity for the remainder of the spouse's life.

(5) The annuity shall be payable to the participant's surviving spouse if any of the following occur:

(A) No child named as a beneficiary by a participant survives the participant.

(B) No children designated by the participant are entitled to an annuity due to their age at the time of death of the participant.

(C) A designation is not made.

(6) An annuity payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant. [P.L.293-1985, § 12; P.L.55-1989, § 34; P.L.334-1989(ss), § 32; P.L.207-1991, § 4; P.L.282-1995, § 1.]

Compiler's Notes. P.L.282-1995, § 6, effective July 1, 1995, provides: "IC 33-13-9.1-4, IC 33-13-10.1-7, IC 33-13-10.1-9, and IC 33-13-10.1-10, all as amended by this act, apply to all benefits paid under IC 33-13-9.1 and IC

33-13-10.2 after June 30, 1995, but do not require the board of trustees of the public employees' retirement fund to recompute any benefits that were paid under IC 33-13-9.1 or IC 33-13-10.1 before July 1, 1995."

NOTES TO DECISIONS

Discretionary Salary Supplements.

Under the statutory scheme for payment of judges' retirement benefits, benefits are based only on the statutory minimum salary, and

not discretionary salary supplements. *Mance v. Board of Dirs. of Pub. Employees' Retirement Fund*, 652 N.E.2d 532 (Ind. App. 1995).

33-13-9.1-5. Permanent disability. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5.

(b) A participant shall be considered permanently disabled if the board has received a written certificate by at least two (2) licensed and practicing physicians, appointed by the board, indicating that the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood and that such condition is likely to be permanent. Such participant shall be reexamined by at least two (2) physicians appointed by the board, periodically at such times as the board shall designate but at intervals of not to exceed one (1) year. If in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of such examination unless, on that date, the participant shall have reached the age of sixty-five (65) years.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

(1) Kept in separate medical files for each member; and

(2) Treated as confidential medical records.

[P.L.293-1985, § 12; P.L.55-1989, § 35; P.L.4-1992, § 16.]

Effective Dates. P.L.4-1992, § 61, provided that the amendment take effect retroactively to January 26, 1992.

33-13-9.1-6. Withdrawal from fund. — Any participant whose employment as a judge is terminated regardless of cause, who shall have less than twelve (12) years service, except as otherwise provided in this chapter, shall be entitled to withdraw from the fund, beginning on the date specified by such participant in a written application. However, the date upon which the withdrawal begins may not be prior to the date of final termination of employment of such participant, or the date thirty (30) days prior to the receipt of such application by the board. Upon the withdrawal, a participant shall be entitled to receive out of the fund an amount equal to the total sum contributed to the fund on behalf of the participant, payable within sixty (60) days from date of withdrawal application or in such monthly installments as the participant may elect. [P.L.293-1985, § 12; P.L.55-1989, § 36.]

33-13-9.1-7. Amount owed spouse, dependent, or estate upon death of participant. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 9 [IC 33-13-9.1-9] of this chapter.

(b) If no annuities are payable to the survivors of a participant who dies after July 1, 1983, then the spouse or child of the participant, as determined by the participant, if any surviving, and if none survive, then any dependent or dependents surviving, shall draw from the fund the amount that the participant paid into the fund plus interest as determined by the board. If no spouse, child, or other dependents survive, then the amount plus interest minus any payments made to the participant shall be paid to the executor or administrator of the participant's estate.

(c) The amount owed a spouse, child, or other dependent, or estate under subsection (a) is payable within sixty (60) days from date of withdrawal application or in such monthly installments as the recipient may elect. [P.L.293-1985, § 12; P.L.55-1989, § 37; P.L.207-1991, § 5.]

33-13-9.1-8. Annuity of dependent child. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 9 [IC 33-13-9.1-9] of this chapter.

(b) If a participant's spouse does not survive him, and there is no child designated and entitled to receive an annuity under section 4 [IC 33-13-9.1-4] of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to an annuity in an amount equal to the annuity the participant's spouse would have received under section 4 of this chapter.

(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, then that dependent child is entitled to receive an annuity in an amount equal to the annuity the spouse was receiving or would have received under section 4 of this chapter.

(d) If there is more than one (1) dependent child, then the dependent children are entitled to share the annuity equally.

(e) Each dependent child is entitled to receive that child's share until the child reaches the age of eighteen (18) years or during the entire period of the child's physical or mental disability, whichever period is longer. [P.L.293-1985, § 12; P.L.55-1989, § 38; P.L.207-1991, § 6.]

33-13-9.1-9. Determination of benefit limitations under Internal Revenue Code. — Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988. This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code, other than Section 415(b)(2)(G), applied without regard to Section 415(b)(2)(F) to anyone who did not first become a participant before January 1, 1990. [P.L.55-1989, § 39.]

33-13-9.1-10. Applicability of section — Credit for prior service — Amortization schedule for contributions. — (a) This section applies to a person who:

- (1) Is a judge participating under this chapter;
 - (2) Before becoming a judge was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;
 - (3) Was a member of the public employees' retirement fund during the employment described in subdivision (2); and
 - (4) Received credited service under the public employees' retirement fund for the employment described in subdivision (2).
- (b) If a person becomes a participant in the judges' 1977 benefit system under IC 33-13-9.1-1, credit for prior service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:
- (1) The prior service was credited under the public employees' retirement fund;
 - (2) The state contributes to the judges' 1977 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and
 - (3) The judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1977 benefit system during the prior service.
- (c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.
- (d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.
- (e) The following provisions apply to a person described in subsection (a):
- (1) A minimum benefit applies to participants receiving credit in the judges' 1977 benefit system from service covered by the public employ-

ees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age and equals the actuarial equivalent of the vested retirement benefit that is:

(A) Payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) Based solely on:

- (i) Creditable service;
- (ii) The average of the annual compensation; and
- (iii) The amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1977 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1977 benefit system may be granted only under subsection (b).

(5) Credit for prior service in the public employees' retirement fund for service other than as a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1977 benefit system. [P.L.207-1991, § 7.]

CHAPTER 10

REFEREES TO ASSIST CITY JUDGES

33-13-10-1 — 33-13-10-3. [Repealed.]

Compiler's Notes. This chapter, concerning referees to assist city judges, was repealed by Acts 1980, P.L. 8, § 164. For present law, see IC 33-10.1-6-5.

CHAPTER 10.1

JUDGES 1985 BENEFIT SYSTEM

SECTION.	SECTION.
33-13-10.1-1. Applicability of chapter.	33-13-10.1-6. Entitlement to retirement benefit.
33-13-10.1-2. Definitions.	33-13-10.1-7. Amount of retirement benefit.
33-13-10.1-3. Participation in fund.	33-13-10.1-8. Determination of permanent disability.
33-13-10.1-4. Contributions to fund.	
33-13-10.1-5. Withdrawal from fund.	

SECTION.

- 33-13-10.1-9. Permanent disability benefit.
 33-13-10.1-10. Surviving spouse's benefit.
 33-13-10.1-11. Benefit for dependent child.
 33-13-10.1-12. Amount owed spouse, dependent, or estate upon death of participant.

SECTION.

- 33-13-10.1-13. Maximum annual benefit.
 33-13-10.1-14. Applicability of section — Credit for prior service — Amortization schedule for contributions.

33-13-10.1-1. Applicability of chapter. — This chapter applies only to an individual who begins service as a judge after August 31, 1985. [P.L.293-1985, § 13.]

33-13-10.1-2. Definitions. — As used in this chapter, the following terms have the meanings set for them in IC 33-13-8-2:

Americans with Disabilities Act
 Board
 Employer
 Fund
 Participant
 Salary
 Services

[P.L.293-1985, § 13; P.L.4-1992, § 17.]

Effective Dates. P.L.4-1992, § 61, provided that the amendment take effect retroactively to January 26, 1992.

33-13-10.1-3. Participation in fund. — Each person who:

- (1) Begins service as a judge after August 31, 1985; and
- (2) Is then not a participant;

shall become a participant in the fund. [P.L.293-1985, § 13.]

33-13-10.1-4. Contributions to fund. — (a) Each participant shall make contributions to this fund of six percent (6%) of each payment of salary received for services as judge. However, the employer may elect to pay the contribution for the participant, as a pickup under Section 414(h) of the Internal Revenue Code.

(b) Participants' contributions, other than participants' contributions paid by the employer, shall be deducted from the monthly salary of each participant by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-13-8-21 and IC 33-13-8-22. However, no contribution is required:

- (1) Because of any salary received after the participant has contributed to the fund for twenty-two (22) years; or
 - (2) During any period that the participant is not serving as judge.
- [P.L.293-1985, § 13; P.L.55-1989, § 40.]

NOTES TO DECISIONS

Discretionary Salary Supplements.

Under the statutory scheme for payment of judges' retirement benefits, benefits are based only on the statutory minimum salary, and

not discretionary salary supplements. *Mance v. Board of Dirs. of Pub. Employees' Retirement Fund*, 652 N.E.2d 532 (Ind. App. 1995).

33-13-10.1-5. Withdrawal from fund. — Any participant who:

- (1) Ceases service as a judge, other than by death or disability; and
 - (2) Is not eligible for a retirement benefit under this chapter;
- is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon the withdrawal, the participant is entitled to receive the total sum contributed, payable within sixty (60) days from date of withdrawal application or in such monthly installments as the participant may elect. [P.L.293-1985, § 13.]

33-13-10.1-6. Entitlement to retirement benefit. — Any participant whose employment as judge is terminated is entitled to a retirement benefit computed under section 7 [IC 33-13-10.1-7] of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

- (1) The date upon which the benefit begins is not before the date of final termination of employment of the participant or the date thirty (30) days before the receipt of the application by the board.
- (2) The participant:
 - (A) has attained at least the age of sixty-two (62) and has at least eight (8) years of service credit; or
 - (B) has become permanently disabled.
- (3) The participant is not receiving any salary from the state for services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge. [P.L.293-1985, § 13; P.L.55-1989, § 41; P.L.207-1991, § 8; P.L.43-1997, § 5.]

33-13-10.1-7. Amount of retirement benefit. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 13 [IC 33-13-10.1-13] of this chapter.

(b) The amount of the annual retirement benefit to which a participant who applies for a retirement benefit and who has attained at least age sixty-five (65) years is entitled equals the product of:

- (1) The salary that was paid to the participant at the time of separation from service; multiplied by
- (2) The percentage prescribed in the following table:

TABLE	
Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%

Participant's Years of Service	Percentage
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(c) If a participant who applies for a retirement benefit has not attained age sixty-five (65) years, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were age sixty-five (65) reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) Participants who are separated from service because of permanent disability.
- (2) Survivors of participants who die while in service after August 1, 1992; or
- (3) Survivors of participants who die while not in service but while entitled to a future benefit. [P.L.293-1985, § 13; P.L.55-1989, § 42; P.L.282-1995, § 2.]

Compiler's Notes. P.L.282-1995, § 6, effective July 1, 1995, provides: "IC 33-13-9.1-4, IC 33-13-10.1-7, IC 33-13-10.1-9, and IC 33-13-10.1-10, all as amended by this act, apply to all benefits paid under IC 33-13-9.1 and IC

33-13-10.2 after June 30, 1995, but do not require the board of trustees of the public employees' retirement fund to recompute any benefits that were paid under IC 33-13-9.1 or IC 33-13-10.1 before July 1, 1995."

33-13-10.1-8. Determination of permanent disability. — (a) A participant shall be considered permanently disabled if the board has received a written certification by at least two (2) licensed and practicing physicians, appointed by the board, that:

- (1) The participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) The condition is likely to be permanent.

The participant shall be reexamined by at least two (2) physicians appointed by the board, at such times as the board may designate but at intervals of not to exceed one (1) year. If in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of such examination unless, on that date, the participant has reached the age of sixty-five (65) years.

(b) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) Kept in separate medical files for each member; and
- (2) Treated as confidential medical records.

[P.L.293-1985, § 13; P.L.4-1992, § 18.]

33-13-10.1-9. Permanent disability benefit. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 13 [IC 33-13-10.1-13] of this chapter.

(b) The amount of the annual benefit payable to which a participant who has become permanently disabled is entitled equals the product of:

- (1) The salary that was paid to the participant at the time of separation from service; multiplied by
- (2) The percentage prescribed in the following table:

TABLE	
Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. [P.L.293-1985, § 13; P.L.55-1989, § 43; P.L.282-1995, § 3.]

Compiler's Notes. P.L.282-1995, § 6, effective July 1, 1995, provides: "IC 33-13-9.1-4, IC 33-13-10.1-7, IC 33-13-10.1-9, and IC 33-13-10.1-10, all as amended by this act, apply to all benefits paid under IC 33-13-9.1 and IC 33-13-10.2 after June 30, 1995, but do not require the board of trustees of the public employees' retirement fund to recompute any benefits that were paid under IC 33-13-9.1 or IC 33-13-10.1 before July 1, 1995."

33-13-10.1-10. Surviving spouse's benefit. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 13 [IC 33-13-10.1-13] of this chapter.

(b) The surviving spouse or child or children of a participant, as designated by the participant, of a participant who:

- (1) Dies; and

(2) On the date of death:

- (A) Was receiving benefits under this chapter;
- (B) Had completed at least eight (8) years of service and was in service as a judge;
- (C) Was permanently disabled; or
- (D) Had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;

is entitled, regardless of the participant's age, to the benefit prescribed by subsection (c).

(c) The surviving spouse or child or children, as designated under subsection (b), is entitled to a benefit equal to the greater of:

- (1) Fifty percent (50%) of the amount of retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 7(c) [33-13-10.1-7(c)] of this chapter; or
- (2) The amount determined under the following table:

TABLE

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(d) The benefit payable to a surviving spouse or surviving child or children under subsection (c) is subject to the following:

- (1) A surviving spouse is entitled to receive the benefit for life.
- (2) The total monthly benefit payable to a surviving child or children is equal to the same monthly benefit that was to have been payable to the surviving spouse.
- (3) If there is more than one (1) child designated by the participant, then the children are entitled to share the benefit in equal monthly amounts.
- (4) Each child entitled to a benefit shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.
- (5) Upon the cessation of benefits to one (1) designated child, if there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share equally the benefit. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.
- (6) The benefit shall be payable to the participant's surviving spouse if any of the following occur:
 - (A) No child named as a beneficiary by a participant survives the participant.
 - (B) No children designated by the participant are entitled to a benefit due to their age at the time of death of the participant.

(C) A designation is not made.

(7) A benefit payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant. [P.L.293-1985, § 13; P.L.55-1989, § 44; P.L.207-1991, § 9; P.L.282-1995, § 4.]

Compiler's Notes. P.L.282-1995, § 6, effective July 1, 1995, provides: "IC 33-13-9.1-4, IC 33-13-10.1-7, IC 33-13-10.1-9, and IC 33-13-10.1-10, all as amended by this act, apply to all benefits paid under IC 33-13-9.1 and IC

33-13-10.2 after June 30, 1995, but do not require the board of trustees of the public employees' retirement fund to recompute any benefits that were paid under IC 33-13-9.1 or IC 33-13-10.1 before July 1, 1995."

33-13-10.1-11. Benefit for dependent child. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 13 [IC 33-13-10.1-13] of this chapter.

(b) If a participant's spouse does not survive the participant, and there is no child designated and entitled to receive a benefit under section 10 [IC 33-13-10.1-10] of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 10 of this chapter.

(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, that dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 10 of this chapter.

(d) If there is more than one (1) dependent child, then the dependent children are entitled to share the benefit equally.

(e) Each dependent child is entitled to receive that child's share until the child reaches the age of eighteen (18) years or during the entire period of the child's physical or mental disability, whichever period is longer. [P.L.293-1985, § 13; P.L.55-1989, § 45; P.L.207-1991, § 10.]

33-13-10.1-12. Amount owed spouse, dependent, or estate upon death of participant. — (a) Benefits provided under this section are subject to IC 33-13-8-3.5.

(b) If no benefits are payable to the survivors of a participant who dies and if a withdrawal application is filed with the board, the total of the participant's contributions plus interest (as determined by the board) minus any payments made to the participant shall be paid to:

- (1) The surviving spouse of the participant or a child or children of the participant, as designated by the participant;
- (2) Any other dependent or dependents of the participant, if a spouse or designated child does not survive; or
- (3) The participant's estate, if a spouse, designated child, or other dependent does not survive.

(c) The amount owed a spouse, designated child, or other dependent or dependents, or estate under subsection (b) is payable within sixty (60) days from the date of receipt of the withdrawal application or in such monthly

installments as the recipient elects. [P.L.293-1985, § 13; P.L.55-1989, § 46; P.L.207-1991, § 11.]

33-13-10.1-13. Maximum annual benefit. — Notwithstanding any other provision of this chapter, benefits paid under this chapter may not exceed the maximum annual benefit specified by Section 415 of the Internal Revenue Code. [P.L.55-1989, § 47.]

33-13-10.1-14. Applicability of section — Credit for prior service — Amortization schedule for contributions. — (a) This section applies to a person who:

- (1) Is a judge participating under this chapter;
- (2) Before becoming a judge was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;
- (3) Was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) Received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1985 benefit system under IC 33-13-10.1-1, credit for prior service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

- (1) The prior service was credited under the public employees' retirement fund;
- (2) The state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and
- (3) The judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1985 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age and equals the actuarial equivalent of the vested retirement benefit that is:

(A) Payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) Based solely on:

- (i) Creditable service;
- (ii) The average of the annual compensation; and

- (iii) The amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.
- (2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.
- (3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).
- (4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1985 benefit system may be granted only under subsection (b).
- (5) Credit for prior service in the public employees' retirement fund for service other than a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1985 benefit system. [P.L.207-1991, § 12.]

CHAPTER 11

JUDGE OF CITY COURT — RESIDENCY REQUIREMENT

33-13-11-1. [Repealed.]

Compiler's Notes. This chapter, concerning judge of city court's residency requirement, was repealed by Acts 1980, P.L. 8, § 164. For present law, see IC 33-10.1-3-2.

CHAPTER 12

JUDGES' SALARIES

SECTION.	SECTION.
33-13-12-1. [Repealed.]	33-13-12-8. [Repealed.]
33-13-12-2. Appropriations.	33-13-12-8.2. Salary of juvenile court magistrate.
33-13-12-3. Appropriation by county councils.	33-13-12-8.5. [Repealed.]
33-13-12-4. Circuits composed of more than one county.	33-13-12-9. Salary of justices of Supreme Court — Salary of judges of Court of Appeals — Subsistence allowance.
33-13-12-5. Counties graded on population and gross assessed valuation.	33-13-12-10. [Repealed.]
33-13-12-6. Classification of counties based on unit factor system.	33-13-12-11. Posting schedule of working hours when court will be open — Exceptions.
33-13-12-7. [Repealed.]	33-13-12-12. Salary schedules — Lowering of classifications.
33-13-12-7.1. Salaries of full-time judges of circuit, superior, municipal, county, and probate courts.	

33-13-12-1. [Repealed.]

Compiler's Notes. This section, containing definitions, was repealed by Acts 1982, P.L. 191, § 11.

33-13-12-2. Appropriations. — There is appropriated out of the general fund of the state, not otherwise appropriated, a sufficient amount to pay the state general fund contributions authorized by this chapter. [Acts 1959, ch. 85, § 2; 1979, P.L. 283, § 3; 1982, P.L. 191, § 5; P.L.299-1983, § 62; P.L.171-1984, § 62; P.L.2-1984, § 4.]

33-13-12-3. Appropriation by county councils. — The county councils of the several counties of the state shall appropriate annually a sufficient amount to pay the county salaries authorized by this chapter. [Acts 1959, ch. 85, § 3; 1981, P.L. 109, § 5; 1981, P.L. 272, § 114.]

33-13-12-4. Circuits composed of more than one county. — Where a judicial circuit is composed of more than one county, all of the counties comprising such circuit, for the purposes of this chapter, shall be considered as one (1) county; in such event, each county shall pay part of the county salary in the same proportion as its individual classification factor bears to the classification factor of the judicial circuit. [Acts 1959, ch. 85, § 4; 1981, P.L. 272, § 115.]

33-13-12-5. Counties graded on population and gross assessed valuation. — For the purpose of this chapter the several counties of the state of Indiana are graded on the basis of population and gross assessed valuation, and each county is set up on the percentage ratio it bears to the state, the whole state being considered as one hundred percent (100%). [Acts 1959, ch. 85, § 5; 1981, P.L. 272, § 116.]

33-13-12-6. Classification of counties based on unit factor system. — (a) The nine (9) classes of the several counties of the state as set out in this chapter are based on a unit factor system. The factors are determined by the relation of the county to the state as established and certified to each county auditor by the state board of accounts not later than July 1 of each year. They are as follows:

(1) Population.

(2) Gross assessed valuation as shown by the last preceding gross assessed valuation as certified by the various counties to the auditor of the state in the calendar year in which the calculation is made.

(b) The factors for each of the nine (9) classes set out in this chapter shall be obtained as follows:

(1) The population of each county shall be divided by the population of the entire state.

(2) The gross assessed valuation of each county shall be divided by the gross assessed valuation of the entire state.

(3) The two (2) results thus obtained shall be added together and the sum thus obtained for each county shall be divided by two (2).

(4) The final result so obtained, multiplied by one hundred (100), shall determine the classification of each county according to the following schedule:

Classification Factors		
High	Low	Class
No Limit	8.001
All under 8.00	2.252
All under 2.25	1.253
All under 1.25	.854
All under .85	.705
All under .70	.606
All under .60	.507
All under .50	.358
All under .35	No Limit9

[Acts 1959, ch. 85, § 6; 1963, ch. 370, § 1; Acts 1981, P.L. 272, § 117; P.L.2-1990, § 13.]

Opinions of Attorney General. Former IC 5-7-8-1 restored, as a “floor,” the classification fixed by the state board of accounts as of

July 1, 1959, with respect to salary schedules under this section, as of March 9, 1961. 1961, No. 59, p. 367.

33-13-12-7. [Repealed.]

Compiler’s Notes. This section, concerning the salaries of circuit, superior, municipal, and probate court judges, was repealed by

P.L.280-1995, § 25, effective August 1, 1997. For present similar provisions, see IC 33-13-12-7.1.

33-13-12-7.1. Salaries of full-time judges of circuit, superior, municipal, county, and probate courts. — (a) The total annual salary of each full-time judge of a circuit, superior, municipal, county, or probate court is ninety thousand dollars (\$90,000) and any additional salary provided under IC 36-2-5-14 or IC 36-3-6-3(c). The state shall pay all of the total salary except for the additional salary, if any, under IC 36-2-5-14 or IC 36-3-6-3(c). The state shall deposit quarterly the money received from the counties under subsection (c) in the state general fund.

(b) Before November 2 of each year, the county auditor of each county shall certify to the division of state court administration the amounts, if any, to be provided by the county during the ensuing calendar year for judges’ salaries under IC 36-2-5-14 or IC 36-3-6-3(c).

(c) When making each payment under subsection (a), the county shall determine for each judge whether the total of:

(1) The payment made on behalf of that judge;

(2) Previous payments made on behalf of that judge in the same calendar year; and

(3) The state share of the judge’s salary under subsection (a);

exceeds the Social Security wage base established by the federal government for that year. If the total does not exceed the Social Security wage base, the payment on behalf of that judge must also be accompanied by an amount equal to the employer’s share of Social Security taxes and Medicare taxes. If the total does exceed the Social Security wage base, the part of the payment

on behalf of the judge that is below the Social Security wage base must be accompanied by an amount equal to the employer's share of Social Security taxes and Medicare taxes, and the part of the payment on behalf of the judge that exceeds the Social Security wage base must be accompanied by an amount equal to the employer's share of Medicare taxes. Payments made under this subsection shall be deposited in the state general fund under subsection (a).

(d) For purposes of determining the amount of life insurance premiums to be paid by a judge who participates in a life insurance program that:

- (1) Is established by the state;
- (2) Applies to a judge who is covered by this section; and
- (3) Bases the amount of premiums to be paid by the judge on the amount of the judge's salary;

the judge's salary does not include any amounts paid to the state by a county under subsection (a). [P.L.280-1995, § 6.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 6 provided that this section take effect August 1, 1997.

33-13-12-8. [Repealed.]

Compiler's Notes. This section, concerning the salary of county court judges, was repealed by P.L.285-1989, § 5, effective January 1, 1990.

33-13-12-8.2. Salary of juvenile court magistrate. — Of the annual salary of a juvenile court magistrate, the county served by the magistrate shall pay forty-one thousand three hundred ninety-three dollars (\$41,393). The balance of the annual salary shall be paid by the state from the state general fund. [IC 33-13-12-8.2, as added by P.L.292-1983, § 9; P.L.2-1984, § 7; P.L.378-1987(ss), § 10; P.L.334-1989(ss), § 33.]

33-13-12-8.5. [Repealed.]

Compiler's Notes. This section, concerning clerk of court, judicial fee and judges' retirement fund, was repealed by P.L.171-1984, § 80. For present similar provisions regarding court fees, see IC 33-19.

33-13-12-9. Salary of justices of Supreme Court — Salary of judges of Court of Appeals — Subsistence allowance. — (a) The total annual salary for each justice of the supreme court of Indiana is one hundred fifteen thousand dollars (\$115,000).

(b) The total annual salary for each judge of the court of appeals of Indiana is one hundred ten thousand dollars (\$110,000).

(c) The state shall pay the annual salaries prescribed in subsections (a) through (b) from the state general fund.

(d) In addition to said salary, there shall be paid in equal monthly payments on the first day of each month out of any money in the general fund of the state treasury not otherwise appropriated, the following annual subsistence allowances to assist in defraying expenses relating to or

resulting from the discharge of the justice's or judge's official duties, for which no accounting shall be made by such judge:

- (1) Five thousand five hundred dollars (\$5,500) to the chief justice of the supreme court.
- (2) Five thousand five hundred dollars (\$5,500) to the chief judge of the court of appeals.
- (3) Three thousand dollars (\$3,000) to each justice of the supreme court who is not the chief justice.
- (4) Three thousand dollars (\$3,000) to each judge of the court of appeals who is not the chief judge.
- (e) The state shall not furnish automobiles for the use of justices or judges compensated under this section. [Acts 1959, ch. 85, § 9; 1965, ch. 201, § 2; 1969, ch. 232, § 4; 1971, P.L. 443, § 4; 1975, P.L. 312, § 5; 1979, P.L. 283, § 6; 1982, P.L. 191, § 8; P.L.2-1984, § 8; P.L.378-1987(ss), § 11; P.L.285-1989, § 3; P.L.159-1990, § 2; P.L.279-1995, § 7; P.L.280-1995, § 7; P.L.209-1996, § 7.]

Effective Dates. P.L.285-1989, § 6. January 1, 1990.

P.L.159-1990, § 3. January 1, 1991.

P.L.280-1995, § 26, declared an emergency and § 7 provided that the amendment take effect August 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 7 provided that the amendment take effect August 1, 1997.

33-13-12-10. [Repealed.]

Compiler's Notes. This section, concerning application of act establishing judges' salaries, was repealed by Acts 1979, P.L. 283,

§ 7. For general salary provisions, see IC 5-7-8, IC 33-13-12-9.

33-13-12-11. Posting schedule of working hours when court will be open — Exceptions. — Every judge described in section 7 [IC 33-13-12-7] of this chapter and the judges of the supreme court and the court of appeals shall formulate, post in a prominent place, and make available to the public, a schedule of the working hours during which the court will be open and during which each judge will be present. Such judges shall hold the courts open and be available therein during regular business hours, or if the business of the court is such that evening or weekend sessions are held, then during such hours as may be specified on the schedule. Any judge may be absent from the court when such absence is due to official business, matters relating to the judge's judicial office, illness, serious personal matters, or regular vacation. [IC 33-13-12-10, as added by Acts 1975, P.L. 312, § 6; 1981, P.L. 272, § 119; P.L.3-1989, § 204.]

33-13-12-12. Salary schedules — Lowering of classifications. — The classification of salary schedules for judges may not be lowered below the classification first fixed by the state board of accounts under this chapter. [P.L.5-1988, § 172.]

CHAPTER 13

JUDICIAL FEE

33-13-13-1. [Repealed.]

Compiler's Notes. This chapter, providing for a six dollar judicial fee in addition to any and all other fees, was repealed by Acts 1971,

P.L. 443, § 5. For present similar provisions regarding fees, see IC 33-19.

CHAPTER 14

JUDICIAL CONFERENCE OF INDIANA

SECTION.

- 33-13-14-1. Created — Membership.
 33-13-14-2. Board of directors — Membership — Chairman — Judicial center — Executive secretary and staff personnel.
 33-13-14-3. Meetings — Committees — Hearings.
 33-13-14-4. Duties.

SECTION.

- 33-13-14-5. Meetings — Per diem and travel allowance.
 33-13-14-6. Roster of in-state facilities with expertise to provide child services in a residential setting.
 33-13-14-7. Administration of alcohol and drug services program.

33-13-14-1. Created — Membership. — (a) There is created a judicial conference of Indiana.

(b) The membership of the conference consists of the following:

- (1) All justices of the supreme court.
- (2) All judges of the court of appeals.
- (3) The judge of the tax court.
- (4) All circuit, superior, probate, and county court judges.
- (5) All municipal court judges who are serving on a full time basis.
- (6) Any retired judge who serves as a special judge and notifies the conference of the service.

(c) A full-time magistrate under IC 33-4-7 is a nonvoting member of the conference. [Acts 1967, ch. 170, § 1; 1977, P.L. 325, § 1; P.L.334-1989(ss), § 34.]

NOTES TO DECISIONS

Compensation of Employees.

The authority delegated by the legislature to the board of directors of the judicial conference to prescribe compensation of probation officers was a power already inherent in the

judicial department, and using a central judicial entity was an efficient, fair and uniform means to set their salaries. In re Madison County Probation Officers' Salaries, 682 N.E.2d 498 (Ind. 1997).

33-13-14-2. Board of directors — Membership — Chairman — Judicial center — Executive secretary and staff personnel. —

(a) The activities of the judicial conference shall be directed by a board of directors having the following members:

- (1) The chief justice of Indiana.
- (2) The chief judge of the Court of Appeals.
- (3) The president of the Indiana judges association.
- (4) The president of the Indiana council of juvenile court judges.

(5) One (1) judge from each of the trial court districts established by the Supreme Court, elected for a term of two (2) years by the trial court judges of the district.

(6) Five (5) trial court judges appointed for terms of one (1) year by the chief justice of Indiana.

(b) The chief justice of Indiana shall serve as chairman of the board of directors. The judicial conference, through the board of directors, shall establish a staff agency to be designated the Indiana judicial center and may establish positions for an executive director, staff personnel, and other necessary personnel. All personnel of the Indiana judicial center shall be appointed by the chief justice of Indiana, and their salaries shall be fixed by the Supreme Court, subject to appropriation by the general assembly.

(c) As used in this section, “trial court judges” refers only to those trial court judges who are members of the judicial conference according to section 1 [IC 33-13-14-1] of this chapter. [Acts 1967, ch. 170, § 2; 1977, P.L. 325, § 2.]

33-13-14-3. Meetings — Committees — Hearings. — (a) The entire membership of the judicial conference shall meet at least once a year at a time and place to be fixed by the board of directors and at such other times as may be designated by it.

(b) The judicial conference may create committees either upon action of the board of directors or by majority vote of the members attending a meeting of the conference. The conference, the board of directors, or any committee of the conference may hold hearings on any question related to the duties set out in section 4 [IC 33-13-14-4] of this chapter. A proposal for legislation relating to courts that is made by the conference shall be presented to the division of state court administration for study and recommendation by the division before being presented to the general assembly. [Acts 1967, ch. 170, § 4; 1977, P.L. 325, § 3; P.L.300-1987, § 3.]

Effective Dates. P.L.300-1987, § 8. January 1, 1988.

33-13-14-4. Duties. — The judicial conference shall:

- (1) promote an exchange of experience and suggestions regarding the operation of Indiana’s judicial system;
- (2) promote the continuing education of judges;
- (3) seek to promote a better understanding of the judiciary;
- (4) act as administrator for probationers participating in the interstate compact for the supervision of parolees and probationers under IC 11-13-4-3; and
- (5) act as compact administrator for probationers participating in the interstate compact on juveniles under IC 31-37-23. [Acts 1967, ch. 170, § 4; 1977, P.L. 325, § 4; P.L.138-1989, § 5; P.L.1-1997, § 127.]

33-13-14-5. Meetings — Per diem and travel allowance. — All members, including full-time magistrates, shall attend and those invited to participate may attend the meetings of the judicial conference. Per diem and

travel allowances authorized by law shall be paid to the members and full-time magistrates attending from the annual appropriation to the judicial conference of Indiana. [Acts 1967, ch. 170, § 5; P.L.334-1989(ss), § 35.]

33-13-14-6. Roster of in-state facilities with expertise to provide child services in a residential setting. — (a) The Indiana judicial center shall maintain a roster of in-state facilities that have the expertise to provide child services (as defined in IC 12-19-7-1) in a residential setting to:

- (1) children in need of services (as described in IC 31-34-1); or
- (2) delinquent children (as described in IC 31-37-1 and IC 31-37-2).

(b) The roster under subsection (a) must include the information that a court having juvenile jurisdiction needs to select an in-state placement of a child instead of placing the child in an out-of-state facility under IC 31-34 or IC 31-37. The roster must include at least the following information:

- (1) Name, address, and telephone number of each facility.
- (2) Owner and contact person for each facility.
- (3) Description of the child services that each facility provides and any limitations that the facility imposes on acceptance of a child placed by a juvenile court.
- (4) Number of children that each facility can serve on a residential basis.
- (5) Number of residential openings at each facility.

(c) The Indiana judicial center shall revise the information in the roster at least monthly.

(d) The Indiana judicial center shall make the information in the roster readily available to courts with juvenile jurisdiction. [P.L.119-1996, § 25; P.L.1-1997, § 128.]

33-13-14-7. Administration of alcohol and drug services program. — The Indiana judicial center shall administer the alcohol and drug services program under IC 12-23-14. [P.L.122-1997, § 6.]

CHAPTER 15

PRIVATE JUDGES

SECTION.

- 33-13-15-1. "Private judge" defined.
- 33-13-15-2. Qualifications of judge — Eligible cases.
- 33-13-15-3. Registration of former judges — Procedure for appointment of private judge.
- 33-13-15-4. Procedure in matters heard by a private judge — Application of trial rules — Appeals.

SECTION.

- 33-13-15-5. Costs.
- 33-13-15-6. Clerk — Sheriff.
- 33-13-15-7. Place of proceedings — Notice.
- 33-13-15-8. Compensation — Contract for services.
- 33-13-15-9. Judicial adoption of rules.

33-13-15-1. "Private judge" defined. — As used in this chapter, "private judge" means a person who is qualified to act as judge of a case under this chapter. [IC 33-13-15-1, as added by Acts 1982, P.L. 194, § 1.]

Valparaiso University Law Review. Private Judging: An Effective and Efficient Alternative to the Traditional Court System, 21 Val. U.L. Rev. 681 (1987).

33-13-15-2. Qualifications of judge — Eligible cases. — (a) A person who:

- (1) Has been but is not currently a judge of a circuit, superior, criminal, probate, municipal, or county court and has served in the capacity of judge for at least four (4) consecutive years;
- (2) Is admitted to the practice of law in Indiana; and
- (3) Is a resident of Indiana;

may act as judge for certain cases in accordance with this chapter.

(b) A person may act as a judge of a case under this chapter only if:

- (1) All parties to the action file a written petition with the executive director of the division of state court administration consenting to the case being heard by a private judge, and naming the person whom they wish to have as private judge;
- (2) The case is one over which the court in which the former judge served would have had subject matter and monetary jurisdiction;
- (3) The case is founded exclusively on contract, tort, or a combination of contract and tort; and
- (4) The case is one in which a utility, as defined in IC 8-1-2-1, is not a party. [IC 33-13-15-2, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-3. Registration of former judges — Procedure for appointment of private judge. — (a) A former judge qualified under section 2(a) [IC 33-13-15-2(a)] of this chapter who wishes to serve as a private judge must register with the executive director of the division of state court administration. The executive director shall compile and periodically update a list of registered former judges, which he shall make available to the public.

(b) If the parties to an action wish to have the action heard before a private judge, they shall submit to the executive director of the division of state court administration a written petition as described in section 2(b)(1) [IC 33-13-15-2(b)(1)] of this chapter, and the executive director shall, after verifying that the former judge is qualified under section 2(a) and is registered under subsection (a), forward the petition to the former judge named on the petition.

(c) The regular or presiding judge of the court in which the action is filed shall appoint the private judge to hear the action if the written petition of the parties to the action and the written consent of the private judge to hear the action is presented to the regular or presiding judge:

- (1) Contemporaneously with the filing of the action; or
- (2) After the action has been filed.

[IC 33-13-15-3, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-4. Procedure in matters heard by a private judge — Application of trial rules — Appeals. — (a) All trials conducted by a private judge shall be conducted without a jury.

(b) A person who serves as a private judge has, for each case that he hears, the same powers as the judge of a circuit court in relation to court procedure, deciding the outcome of the case, attendance of witnesses, punishment of contempts, enforcement of orders, administering of oaths, and giving of all necessary certificates for the authentication of the records and proceedings.

(c) All proceedings in an action heard by a private judge shall be of record, which shall be filed with the clerk of the circuit court in the county of proper venue under the Indiana Rules of Trial Procedure and made available to the public in the same manner as circuit court records.

(d) The Indiana Rules of Trial Procedure apply for all actions brought before a private judge, and an appeal from an action or judgment of a private judge may be taken in the same manner as an appeal from the circuit court of the county where the case is filed. [IC 33-13-15-4, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-5. Costs. — Costs in an action brought before a private judge shall be taxed and distributed in the same manner as costs in the circuit court of the county in which the case is filed. [IC 33-13-15-5, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-6. Clerk — Sheriff. — (a) The clerk of the circuit court of the county where the case is filed shall serve as the clerk of the court for a case heard by a private judge, and the sheriff of that county shall serve as the sheriff of the court for such a case. They shall attend the proceedings and perform the same duties relating to their offices as they are required to do for the circuit court of the county in which the case is filed.

(b) The clerk of the circuit court of the county in which the case is filed shall provide to a private judge for each case all books, dockets, papers, and printed blanks necessary to discharge the duties of the court. [IC 33-13-15-6, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-7. Place of proceedings — Notice. — (a) A case heard by a private judge may be heard:

- (1) At any time; and
- (2) At any place in Indiana;

that is mutually agreeable to all parties and the judge.

(b) There shall be posted in the office of the clerk of the circuit court of the county in which the case is filed, in a place accessible to the public, a notice of the date, time and place of any proceeding which could result in a judgment. Such proceedings include, but are not limited to, hearings on motions for judgment by default, judgment on the pleadings, summary judgment and trial upon the merits. Such notice shall be posted at least three (3) days before the proceeding is conducted. [IC 33-13-15-7, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-8. Compensation — Contract for services. — Notwithstanding the rules of trial procedure, a private judge may receive compen-

sation for hearing a case in an amount and subject to the terms and conditions agreed to by the judge and the parties to the case. A contract for the services of a private judge must provide for the payment of the judge’s compensation by the parties. In addition, the contract must include terms and conditions relating to:

- (1) The compensation of all personnel; and
 - (2) The costs of all facilities and materials;
- as determined by the clerk of the court which are used in relation to the case, and which are not otherwise covered. [IC 33-13-15-8, as added by Acts 1982, P.L. 194, § 1.]

33-13-15-9. Judicial adoption of rules. — The Supreme Court shall judicially adopt rules to carry out this chapter. [IC 33-13-15-9, as added by Acts 1982, P.L. 194, § 1.]

CHAPTER 16
TEMPORARY JUDGES

- SECTION.
- 33-13-16-1. Appointment.
 - 33-13-16-2. Procedural powers.
 - 33-13-16-3. Jurisdiction.
 - 33-13-16-4. Civil jury trials.
 - 33-13-16-5. Criminal jury trials.
 - 33-13-16-6. Limitation of rights and powers by appointing judge.

- SECTION.
- 33-13-16-7. Serving as judge pro tempore.
 - 33-13-16-8. Power of judicial mandate.
 - 33-13-16-9. Compensation.
 - 33-13-16-10. Limitation on term of appointment — Exception.
 - 33-13-16-11. Service while appointing judge is present and presiding.

33-13-16-1. Appointment. — (a) The judge of a circuit, superior, or county court may appoint temporary judges. Each temporary judge must be a competent attorney admitted to the practice of law in Indiana and must be a resident of the judicial district of the court after the temporary judge’s appointment. The temporary judge’s appointment must be in writing. The temporary judge continues in office until removed by the judge.

(b) A temporary juvenile law judge may be appointed under this subsection for the exclusive purpose of hearing cases arising under IC 31-30 through IC 31-40. The appointment shall be made under an agreement between at least two (2) judges of courts:

- (1) all of which are located in the same county; or
- (2) all of which are located in counties that are adjacent to one another.

(c) An agreement under subsection (b) must:

- (1) be filed with the circuit court clerk of each county in which a court subject to the agreement is located;
- (2) specify the duration of the agreement, which may not exceed one (1) year; and
- (3) permit a judge to end the participation of a court in the agreement.

[P.L.169-1984, § 1; P.L.190-1986, § 1; P.L.334-1989(ss), § 36; P.L.1-1997, § 129.]

Cited: State ex rel. Peacock v. Marion Superior Court, 490 N.E.2d 1094 (Ind. 1986).

NOTES TO DECISIONS

ANALYSIS

Authority.
No discretion.

Authority.

Proceedings purportedly conducted before a temporary judge who was not the regular judge of the county superior court and who was purportedly appointed by an order which did not bear a date indicating when the appointment would have become effective, nor

did it bear a file stamp indicating when it had become a part of the record in the proceedings, were devoid of an appealable final order of judgment. *Beach v. Beach*, 604 N.E.2d 656 (Ind. App. 1992).

No Discretion.

The criteria and the procedure for the appointment of temporary judges are nondiscretionary. *Beach v. Beach*, 604 N.E.2d 656 (Ind. App. 1992).

33-13-16-2. Procedural powers. — A temporary judge may administer all oaths and affirmations required by law, take and certify affidavits and depositions, and issue subpoenas for witnesses whose testimony is to be taken before him. The temporary judge has the same power to compel the attendance of witnesses and to punish contempts as the judge of the court has. The temporary judge may conduct preliminary hearings in criminal matters and issue search warrants and arrest warrants and fix bond thereon, and he may enforce court rules. [P.L.169-1984, § 1.]

33-13-16-3. Jurisdiction. — A temporary judge may hear evidence upon and report his findings to the judge of the court for each probate, civil, criminal, and other case referred to the temporary judge by that judge. The temporary judge may:

- (1) Make the final judgment in these cases; and
- (2) In a criminal case tried by the court, conduct all sentencing hearings in the case.

However, if the criminal case is a case in which the defendant is being tried for a felony, the judge of the court shall conduct all sentencing hearings and make the final judgment in the case. [P.L.169-1984, § 1.]

NOTES TO DECISIONS

Sentencing.

Judge who not only served as a temporary judge on the day of defendant's sentencing, but was also the duly appointed judge pro tempore who presided over defendant's trial,

but as judge pro tempore, had continuing jurisdiction to conduct the sentencing hearing and impose sentence in the matter for which he was appointed. *Williams v. State*, 646 N.E.2d 80 (Ind. App. 1995).

33-13-16-4. Civil jury trials. — A temporary judge may conduct a jury trial, receive the verdict of the jury in a civil case referred to him by the judge of the court, and make and enter the judgment on the jury verdict in that case. [P.L.169-1984, § 1.]

33-13-16-5. Criminal jury trials. — In a criminal jury trial referred to him by the judge of the court, a temporary judge may conduct the trial, receive the verdict of the jury, and conduct all sentencing hearings and make all final judgments. However, if the criminal case is a case in which the defendant is being tried for a felony, the judge of the court shall:

- (1) Make the final judgment in the case; and
- (2) Conduct all sentencing hearings in the case.

[P.L.169-1984, § 1.]

NOTES TO DECISIONS

Sentencing.

Judge who not only served as a temporary judge on the day of defendant's sentencing, but was also the duly appointed judge pro tempore who presided over defendant's trial,

but as judge pro tempore, had continuing jurisdiction to conduct the sentencing hearing and impose sentence in the matter for which he was appointed. *Williams v. State*, 646 N.E.2d 80 (Ind. App. 1995).

33-13-16-6. Limitation of rights and powers by appointing judge.

— The judge of the court may limit any of the rights or powers of the temporary judge specified in this chapter, and the judge may specifically determine the duties of the temporary judge, within the limits established in this chapter. [P.L.169-1984, § 1.]

33-13-16-7. Serving as judge pro tempore. — A temporary judge may serve as a judge pro tempore or a special judge of the court but is not entitled to additional compensation for that service. [P.L.169-1984, § 1.]

Cited: *State ex rel. Peacock v. Marion Superior Court*, 490 N.E.2d 1094 (Ind. 1986).

33-13-16-8. Power of judicial mandate. — A temporary judge has no power of judicial mandate. [P.L.169-1984, § 1.]

33-13-16-9. Compensation. — A temporary judge is entitled to twenty-five dollars (\$25) for each day that he serves as a temporary judge, and this payment shall be paid by the county. [P.L.169-1984, § 1.]

33-13-16-10. Limitation on term of appointment — Exception. — Except for:

(1) a temporary juvenile law judge appointed under section 1(b) [IC 33-13-16-1(b)] of this chapter for the exclusive purpose of hearing cases arising under IC 31-30 through IC 31-40; or

(2) a temporary judge appointed by a court located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

a temporary judge appointed under this chapter may not serve for more than sixty (60) calendar days in the aggregate during a calendar year. [P.L.169-1984, § 1; P.L.334-1989(ss), § 37; P.L.40-1990, § 52; P.L.12-1992, § 137; P.L.1-1997, § 130.]

Compiler's Notes. According to the 1990 federal census, the county having a popula-

tion of more than 200,000 but less than 300,000 is St. Joseph.

33-13-16-11. Service while appointing judge is present and presiding. — A temporary judge appointed under this chapter may serve even

though the judge of the court is present and presiding in the court. [P.L.169-1984, § 1.]

CHAPTER 17

DEFENSE AND INDEMNIFICATION OF JUDGES FOR CIVIL DAMAGES

SECTION.

33-13-17-1. Applicability of chapter.

33-13-17-2. "Expenses" defined.

33-13-17-3. "Judge" defined.

SECTION.

33-13-17-4. Payment by state of expenses incurred by a judge from action or proceeding.

33-13-17-1. Applicability of chapter. — This chapter does not apply to a threatened, pending, or completed action or a proceeding that:

- (1) Results in the criminal conviction of; or
 - (2) Is a disciplinary action or proceeding against;
- a judge. [P.L.207-1991, § 13.]

33-13-17-2. "Expenses" defined. — As used in this chapter, "expenses" includes the following:

- (1) Reasonable attorney's fees, if the attorney general has authorized the executive director of the division of state court administration to hire private counsel to provide the defense.
- (2) A judgment.
- (3) A settlement.
- (4) Court costs.
- (5) Discovery costs.
- (6) Expert witness fees.
- (7) Any other expense incurred as a result of an action or a proceeding. [P.L.207-1991, § 13.]

33-13-17-3. "Judge" defined. — As used in this chapter, "judge" means an individual who currently holds or formerly held one (1) of the following offices or appointments:

- (1) Justice of the supreme court.
- (2) Judge of the court of appeals.
- (3) Judge of the tax court.
- (4) Judge of a circuit court.
- (5) Judge of a superior court.
- (6) Judge of a probate court.
- (7) Judge of a municipal court.
- (8) Judge of a county court.
- (9) Judge of a city court.
- (10) Judge of a town court.
- (11) Judge of a small claims court.
- (12) A judge pro tempore, senior judge, temporary judge, or any other individual serving as judge in an action or a proceeding in an Indiana court.
- (13) Bail commissioner.
- (14) Magistrate.

- (15) Master commissioner.
- (16) Probate commissioner.
- (17) Referee.

[P.L.207-1991, § 13.]

33-13-17-4. Payment by state of expenses incurred by a judge from action or proceeding. — The state shall pay the expenses incurred by a judge from a threatened, pending, or completed action or proceeding that arises from:

- (1) Making;
- (2) Performing; or
- (3) Failing to make or perform;

a decision, a duty, an obligation, a privilege, or a responsibility of the judge’s office. [P.L.207-1991, § 13.]

ARTICLE 14

PROSECUTING ATTORNEYS

CHAPTER

- 1. PROSECUTING ATTORNEYS — CIRCUIT COURTS, 33-14-1-1 — 33-14-1-8.
- 2. PROSECUTING ATTORNEYS AND THEIR DEPUTIES EMPOWERED TO ADMINISTER OATHS, 33-14-2-1.
- 3. ASSISTANCE IN PROCURING A LIQUOR LICENSE PROHIBITED, 33-14-3-1.
- 4. TRAVEL EXPENSES — CRIMINAL ACTIONS, 33-14-4-1.
- 5. PROSECUTING ATTORNEYS MAY ACT AS NOTARIES PUBLIC, 33-14-5-1 — 33-14-5-4.
- 6. INVESTIGATORS — CERTAIN PROSECUTING ATTORNEYS TO APPOINT, 33-14-6-1, 33-14-6-2.

CHAPTER

- 7. PROSECUTING ATTORNEYS — SALARY, 33-14-7-1 — 33-14-7-21.
- 8. PROSECUTING ATTORNEYS COUNCIL, 33-14-8-1 — 33-14-8-5.
- 9. PROSECUTING ATTORNEYS RETIREMENT FUND, 33-14-9-1 — 33-14-9-23.
- 10. VICTIM ASSISTANCE PROGRAMS, 33-14-10-1 — 33-14-10-6.
- 11. DEFENSE AND INDEMNIFICATION OF PROSECUTING ATTORNEYS FOR CIVIL DAMAGES, 33-14-11-1 — 33-14-11-4.

CHAPTER 1

PROSECUTING ATTORNEYS — CIRCUIT COURTS

SECTION.

- 33-14-1-1. [Repealed.]
- 33-14-1-2. Bond.
- 33-14-1-3. Duty when informed of crimes.
- 33-14-1-4. Duties.
- 33-14-1-5. [Repealed.]
- 33-14-1-6. Appointment of special prosecutors.

SECTION.

- 33-14-1-7. Conditions for withholding prosecution — Disposition of money collected as user’s fees — Confidential form.
- 33-14-1-8. Prosecutor to inform employer of charge.

33-14-1-1. [Repealed.]

Compiler’s Notes. This section, which provided for the biennial election of prosecuting attorneys, was repealed by Acts 1978, P.L.

2, § 3308. For present provisions concerning the election of prosecuting attorneys for four-year terms, see Ind. Const., art. 7, § 16.

33-14-1-2. Bond. — Every person elected to the office of prosecuting attorney, before entering upon the duties of his office, shall execute a bond

in the manner prescribed by IC 5-4-1. [2 R.S. 1852, Part III, ch. 3, § 2, p. 385; 1981, P.L. 47, § 21.]

NOTES TO DECISIONS

In General.

An action will not lie on the bond of a prosecuting attorney for failing to take a judgment by default on a recognizance when

the defendant failed to appear. *State ex rel. Michener v. Egbert*, 123 Ind. 448, 24 N.E. 256 (1890).

33-14-1-3. Duty when informed of crimes. — Whenever any prosecuting or district attorney shall receive information of the commission of any felony or such district attorney of the commission of any misdemeanor he shall cause process to issue from a court having jurisdiction to issue the same, (except the circuit court,) to the proper officer, directing him to subpoena the persons therein named likely to be acquainted with the commission of such felony or misdemeanor, and shall examine any person so subpoenaed before such court touching such offense: and if the facts thus elicited are sufficient to establish a reasonable presumption of guilt against the party charged, said court shall cause so much of said testimony as amounts to a charge of a felony or misdemeanor to be reduced to writing and subscribed and sworn to by such witness, whereupon such court shall cause process to issue for the apprehension of the accused, as in other cases. [2 R.S. 1852, Part III, ch. 3, § 3, p. 385.]

Compiler's Notes. The provisions in this section relating to the district attorney are obsolete since that office was abolished and the jurisdiction of the common pleas courts transferred to the circuit courts by former IC 33-4-3-1, IC 33-4-3-2. As to authority of prosecuting attorney to bring criminal charges in circuit court, see *Stiles v. State*, 156 Ind. App. 675, 37 Ind. Dec. 375, 298 N.E.2d 466 (1973).

Indiana Law Journal. Nonfeasance, a Threat to the Prosecutors' Discretion, 30 Ind. L.J. 74.

The Right to Counsel in Prosecutorial Interrogations, 57 Ind. L.J. 499.

Cited: *Williams v. State*, 430 N.E.2d 759 (Ind. 1982).

NOTES TO DECISIONS

ANALYSIS

In general.

Constitutionality.

Application of section.

Bringing of criminal charges by affidavit in circuit court.

Purpose.

Subpoena powers.

In General.

Duties of prosecuting attorneys are, in general, prescribed by statute. *State ex rel. Williams v. Ellis*, 184 Ind. 307, 112 N.E. 98 (1916).

Where, on invitation of prosecuting attorney, witness appeared before grand jury without subpoena being served, and answered on oath incriminating questions, he cannot be prosecuted on indictment for visiting gam-

bling houses resulting therefrom. *Atkinson v. State*, 190 Ind. 1, 128 N.E. 433 (1920).

Although the office of prosecuting attorney is provided for in the Indiana Constitution, he receives his authority to act from the legislature. Where the legislature had enumerated the powers incident to any given office and the Constitution is silent as to the duties of that office, the legislature's enactment is final and supersedes any residual authority that office may have had at common law. *Mounts v. State*, 496 N.E.2d 37 (Ind. 1986).

Constitutionality.

This section has been held not to violate the fourth amendment protections. *Lee v. State*, 526 N.E.2d 963 (Ind. 1988).

Application of Section.

The act abolishing the common pleas courts

Application of Section. (Cont'd)

and transferring the jurisdiction thereof to the circuit courts did not have the effect of making this section applicable to circuit courts. *Ellison v. State*, 125 Ind. 492, 24 N.E. 739 (1890); *West v. State*, 32 Ind. App. 161, 69 N.E. 465 (1904).

An indictment or information is "process" for "apprehension" of the accused, and once that process has issued, this section no longer is an available prosecutorial tool with respect to the crime charged. *Rita v. State*, 674 N.E.2d 968 (Ind. 1996).

Bringing of Criminal Charges by Affidavit in Circuit Court.

To the extent that this section prohibits bringing of criminal charges by affidavit in a circuit court, it was repealed by implication by enactment of former IC 35-1-16-9, IC 35-1-16-10, which clearly authorized bringing of charges by affidavit. *Stiles v. State*, 156 Ind. App. 675, 298 N.E.2d 466, 37 Ind. Dec. 375 (1973) (decision prior to repeal of former IC 35-1-16-9, IC 35-1-16-10 (now superseded by IC 35-34-1-1 — IC 35-34-1-19)).

Purpose.

The obvious purpose of this section is to

permit the prosecuting attorney to proceed with an orderly investigation of crime and to furnish him with a device to obtain the presence of recalcitrant witnesses. *Lee v. State*, 526 N.E.2d 963 (Ind. 1988).

Subpoena Powers.

A prosecutor has the same ability to accumulate evidence as the grand jury and may cause a subpoena duces tecum to be issued to a telephone company to obtain records of long distance calls received at a certain number. *Indiana Bell Tel. Co. v. State*, 274 Ind. 131, 409 N.E.2d 1089, 78 Ind. Dec. 189 (1980).

A subpoena duces tecum directing a bank to produce copies of all accounts, business and personal checking accounts, and savings accounts of a particular customer for a particular month was not impermissible under the fourth amendment for the following reasons: (1) the prohibitions of this amendment are inapplicable to subpoenas duces tecum; (2) no legitimate expectation of privacy attaches to the contents of checks and deposit slips; and (3) the prosecutor was engaged in his statutorily defined duty to amass evidence and to prosecute felons. *Citizens State Bank v. State*, 479 N.E.2d 1344 (Ind. App. 1985).

33-14-1-4. Duties. — Except as provided in IC 12-15-23-6(d), the prosecuting attorneys, within their respective jurisdictions, shall conduct all prosecutions for felonies, misdemeanors, or infractions and all suits on forfeited recognizances; and superintend, on behalf of counties or any of the trust funds, all suits in which the same may be interested or involved, and shall perform all other duties required by law. [2 R.S. 1852, Part III, ch. 3, § 4, p. 385; Acts 1969, ch. 45, § 1; 1977, P.L. 313, § 15; P.L.10-1994, § 6.]

Cross References. Agricultural cooperative associations, violations of law, prosecutions, IC 15-7-1-18.

Amusement places, safety regulations, enforcement, IC 22-14-3, IC 22-15-7.

Blue Sky Law, duties, IC 23-2-1-15.

Engineers regulatory law, enforcement, IC 25-31-1-28, IC 25-31-1-29.

Franchise sales violations, report to commissioner, IC 23-2-2.5-36.

Fruit and Vegetable Container Act, enforcement, IC 24-6-6-9.

Health laws and regulations, enforcement, IC 16-19-3-12.

Hedge fences, duties as to, IC 32-10-4-3, IC 32-10-5-3.

Labor laws, duty to enforce, IC 22-2-9-4, IC 22-3-4-13.

Surety subrogated, prosecutor a party, IC 35-33-8.5-11.

Opinions of Attorney General. Upon a proper showing of a criminal nuisance, prosecuting attorney is required to institute proceedings against offender without added compensation. 1933, p. 348.

The prosecuting attorney, grand jury, or deputy prosecutor, individually or collectively, are unauthorized by law to incur expense on their own initiative which shall purport to be an obligation of the county, either in the absence of an appropriation or beyond the unexpended balance of an appropriation. 1947, No. 65, p. 327.

Cited: *Williams v. State*, 430 N.E.2d 759 (Ind. 1982).

NOTES TO DECISIONS

ANALYSIS

In general.
 Appeals.
 Change of venue.
 Civil actions.
 Criminal appeals.
 Escheats.
 Injunctions.
 Intoxicating liquors.
 Remission of punishment.
 Special prosecutors.

In General.

The legislature may increase or diminish the duties of prosecuting attorneys. *State ex rel. Hench v. Morrison*, 64 Ind. 141 (1878); *State ex rel. Williams v. Ellis*, 184 Ind. 307, 112 N.E. 98 (1916).

If, by failure of a prosecuting attorney to bring a suit, the attorney general has a right to institute such suit, such prosecuting attorney cannot in any manner control such suit. *State v. Schloss*, 92 Ind. 293 (1883).

It is the duty of the prosecuting attorney to defend the interests of the state when a petition for writ of error coram nobis is filed in a criminal case, but he is not required to appear in the action until notice is given as required by law, nor can he waive service of the petition on the attorney general as provided by statute. *State ex rel. Wadsworth v. Mead*, 225 Ind. 123, 73 N.E.2d 53 (1947).

Where, in a proceeding for writ of error coram nobis all actions taken, consisting of motion for change of venue, appointment of a special judge, filing of the petition for the writ, and various other actions of the special judges, were void without notice to the prosecuting attorney or the attorney general, and the special judge was without authority to act, and he was prohibited permanently from further acting as special judge in the matter, all his actions as special judge were ordered expunged from the record. *State ex rel. Wadsworth v. Mead*, 225 Ind. 123, 73 N.E.2d 53 (1947).

Although the office of prosecuting attorney is provided for in the Indiana Constitution, he receives his authority to act from the legislature. Where the legislature had enumerated the powers incident to any given office and the Constitution is silent as to the duties of that office, the legislature's enactment is final and supersedes any residual authority that office may have had at common law. *Mounts v. State*, 496 N.E.2d 37 (Ind. 1986).

Appeals.

The prosecuting attorney was impliedly authorized to subscribe his name to appeal notices, and to prepare and sign assignments of

errors, and take all necessary steps leading up to an appeal to the Supreme Court by the state in criminal cause. *State v. Sopher*, 157 Ind. 360, 61 N.E. 785 (1901).

Change of Venue.

It is the duty of the prosecuting attorney to prosecute all cases initiated by him to their termination and upon change of venue, to follow such cases and actively assist in the prosecution thereof, as the regular prosecuting attorney of the court trying the same shall direct. *State ex rel. Neeriemer v. Daviess Circuit Court*, 236 Ind. 624, 142 N.E.2d 626 (1957).

The prosecution of the case in the county to which the venue was changed was a duty "required by law" and the statutory compensation paid the prosecutor was in full for such services. *State ex rel. Neeriemer v. Daviess Circuit Court*, 236 Ind. 624, 142 N.E.2d 626 (1957).

Civil Actions.

It is the duty of prosecuting attorneys to prosecute civil actions on behalf of counties without extra compensation. *Board of County Comm'rs v. Templer*, 34 Ind. 322 (1870).

Criminal Appeals.

Prosecuting attorneys do not have the authority alone to appeal criminal cases to the Court of Appeals. *State v. Market*, 158 Ind. App. 192, 302 N.E.2d 528, 39 Ind. Dec. 147 (1973).

Escheats.

Prosecuting attorneys should prosecute suits to recover property that escheats to the state for the want of heirs. *Fuhrer v. State ex rel. Att'y Gen.*, 55 Ind. 150 (1876).

Injunctions.

Where the information alleged "that the several township trustees and the county superintendent of schools of the county are now unlawfully performing and have unlawfully performed all the functions of the county school corporation without first duly and legally organizing and incorporating as a county school corporation," there is no authority granted the prosecuting attorney to ask for injunctive relief in connection therewith by bringing an action of quo warranto proceeding. *State ex rel. Doll v. Fulton Circuit Court*, 241 Ind. 171, 169 N.E.2d 604 (1960).

Intoxicating Liquors.

It is prosecuting attorney's official duty to prosecute proceedings for search and seizure of illegally-kept intoxicating liquors. *Steward v. State*, 180 Ind. 397, 103 N.E. 316 (1913).

Remission of Punishment.

Prosecuting attorneys cannot remit any portion of the punishment assessed in criminal actions. *State v. Brewer*, 7 Blackf. 45 (1843).

Special Prosecutors.

An indictment will not be held defective on appeal because it is signed by a special prosecuting attorney appointed by the court instead of the regular prosecuting attorney. *Huffman v. State*, 183 Ind. 698, 109 N.E. 401 (1915).

Special prosecuting attorney has no greater power than, and his authority is circum-

scribed by statutes applicable to, regular prosecuting attorney, which includes prosecutions for felonies and misdemeanors. *Williams v. State*, 188 Ind. 283, 123 N.E. 209 (1919).

Upon proof of the personal involvement of the prosecutor in the proceedings before the grand jury and of his refusal to disqualify himself, as admitted by his motion to dismiss, it became incumbent upon the court to order such prosecutor disqualified from such proceeding and to appoint a disinterested person in his place. *State Board of Accounts v. Holovachka*, 236 Ind. 565, 142 N.E.2d 593 (1957).

Collateral References. Constitutionality and construction of statute against public attorney representing private person in civil action. 82 A.L.R.2d 774.

Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law. 6 A.L.R.3d 562.

Disqualification of prosecuting attorney on

account of relationship with accused. 42 A.L.R.5th 581; 110 A.L.R. Fed. 523.

Power of assistant or deputy prosecuting or district attorney to prosecute information in his own name. 80 A.L.R.2d 1067.

Power or duty of prosecuting attorney to proceed with prosecution after change of venue. 60 A.L.R.2d 864.

33-14-1-5. [Repealed.]

Compiler's Notes. This section, concerning the appointment of a prosecutor if the prosecuting attorney fails to attend court, was

repealed by Acts 1982, P.L. 195, § 2. For present provisions on the appointment of special prosecutors, see IC 33-14-1-6.

33-14-1-6. Appointment of special prosecutors. — (a) Special prosecutors may be appointed only in accordance with this section.

(b) A circuit or superior court judge:

(1) shall appoint a special prosecutor if:

(A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and

(B) the prosecuting attorney agrees that a special prosecutor is needed;

(2) may appoint a special prosecutor if:

(A) a person files a verified petition requesting the appointment of a special prosecutor; and

(B) the court, after:

(i) notice is given to the prosecuting attorney; and

(ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard;

finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and

- (B) the court finds that the appointment is necessary to avoid the appearance of impropriety; and
- (4) may appoint a special prosecutor if:
- (A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
- (B) the court finds that the appointment of a special prosecutor is in the best interests of justice.
- (c) Each person appointed to serve as a special prosecutor:
- (1) must consent to the appointment; and
- (2) must be:
- (A) the prosecuting attorney; or
- (B) a deputy prosecuting attorney;
- in a county other than the county in which the person is to serve as special prosecutor.
- (d) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the scope of the special prosecutor's duties shall be limited by the appointing judge to include only the investigation or prosecution of a particular case or particular grand jury investigation.
- (e) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.
- (f) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:
- (1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and
- (2) shall not exceed a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, and travel expenses, and reasonable accommodation expenses actually incurred.
- (g) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:
- (1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and
- (2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred. [IC 33-14-1-6, as added by Acts 1982, P.L. 195, § 1; P.L.170-1984, § 1; P.L.136-1992, § 1; P.L.217-1996, § 1.]

Res Gestae. Rules and Rulings for the Trial Lawyer, 40 (No. 7) Res Gestae 14 (1997).

Cited: *Cruse v. State*, 482 N.E.2d 763 (Ind. App. 1985); *Richardson v. State*, 486 N.E.2d 1058 (Ind. App. 1985); *Timmons v. State*, 500

N.E.2d 1212 (Ind. 1986); *State v. Warrick* Circuit Court, 591 N.E.2d 559 (Ind. 1992); *Terry v. State*, 602 N.E.2d 535 (Ind. App. 1992).

NOTES TO DECISIONS

ANALYSIS

Appointment.

- Challenging validity.
- Necessary.
- Not necessary.
- Parties to proceeding.
- Appointment power.
- Authority.
- De facto public official.
- Eligibility requirements.
- Compliance required.
- Prosecuting attorney.
- Petition.
- Dismissal.
- Motion overruled.
- Sufficient.

Appointment.**—Challenging Validity.**

Since a person holding the position of special prosecutor under color of appointment is a de facto public official, the proper remedy for challenging the validity of his appointment and the validity of his acts necessitates a direct challenge by the filing of an application for a writ of prohibition in the supreme court pursuant to the Indiana rules of procedure for original actions, and if his appointment is not subject to the type of attack mounted against it, the trial court does not err in permitting him to continue as special prosecutor of the case. *Wininger v. State*, 526 N.E.2d 1216 (Ind. App. 1988).

—Necessary.

A special prosecutor is necessary only when the accused can demonstrate that, by reason of his former confidential relationship with the prosecutor, the prosecutor has acquired special knowledge of the facts being litigated, or facts which are closely interwoven therewith. *Sears v. State*, 457 N.E.2d 192 (Ind. 1983).

A prosecutor's apparent prejudice against a defendant does not satisfy the requirements for appointment of a special prosecutor. *Kindred v. State*, 521 N.E.2d 320 (Ind. 1988); *Aschliman v. State*, 578 N.E.2d 759 (Ind. App. 1991), vacated on other grounds, 589 N.E.2d 1160 (Ind. 1992).

A defendant is only entitled to a special prosecutor if the trial court finds, by clear and convincing evidence, that a special prosecutor is necessary to avoid a conflict of interest or that the prosecutor has committed a crime. *Jorgensen v. State*, 567 N.E.2d 113 (Ind. App.), aff'd in part and vacated in part on other grounds, 574 N.E.2d 915 (Ind. 1991).

—Not Necessary.

Trial court did not err in refusing to appoint

a special prosecutor where, although prosecuting attorney in a murder case was at the scene and aided in a search for knife allegedly wielded by victim and the prosecutor's voice could be heard on a police videotape of the search commenting on the fact that knife couldn't be found and commenting on condition of victim's body, since judge ordered that jury was not to hear the audio portion of the videotape, the knife was never found, and condition of victim's body was presented as evidence at the trial, there was nothing about the prosecutor's participation that would have made him a necessary witness for the defense. *Wilcox v. State*, 619 N.E.2d 574 (Ind. 1993).

—Parties to Proceeding.

The elected prosecutor is a proper party to a proceeding which seeks the appointment of a special prosecutor. *Williams v. Newman*, 686 N.E.2d 857 (Ind. App. 1997).

Appointment Power.

Courts exercising criminal jurisdiction have the inherent power and duty to appoint attorneys to assist the prosecutor in the trial of criminal cases. *State ex rel. Goldsmith v. Superior Court*, 270 Ind. 487, 386 N.E.2d 942, 68 Ind. Dec. 241 (1979).

Authority.

The authority of a de facto public official appointed as a special prosecutor in a murder case could not be collaterally attacked in the prosecution itself. *Cox v. State*, 493 N.E.2d 151 (Ind. 1986).

The lack of authority of a special prosecutor must result in harm to the defendant in order to constitute reversible error. *Cox v. State*, 493 N.E.2d 151 (Ind. 1986).

De Facto Public Official.

A special prosecutor's act of dismissing an information under an original cause number and, on the same day, refileing a new information charging the same offense based on the same facts, albeit under a new cause number, was not so clearly beyond his authority (if indeed it was beyond his authority) that the special prosecutor was not acting under some colorable or apparent authority; the special prosecutor was, at a minimum, acting as a de facto prosecutor. It is well established that acts of a de facto public official may not be collaterally attacked, as by a motion to dismiss. *State v. Waldon*, 481 N.E.2d 1331 (Ind. App. 1985).

Eligibility Requirements.**—Compliance Required.**

Absent compliance with the eligibility re-

Eligibility Requirements. (Cont'd)**—Compliance Required. (Cont'd)**

quirements under this section, it would be improper for an individual to continue as a special prosecutor, and where there has been no affidavit filed by the most recently elected prosecutor alleging a conflict of interest nor has there been a finding that the special prosecutor's appointment is necessary to avoid the appearance of impropriety, it is improper for him to continue as the special prosecutor. *Wininger v. State*, 526 N.E.2d 1216 (Ind. App. 1988).

—Prosecuting Attorney.

The eligibility requirements contained in subsection (c) requiring a person appointed to serve as a special prosecutor be either the prosecuting attorney or a deputy prosecuting attorney in another county applies at the time of appointment only; a duly appointed special prosecutor whose service ceases as either the prosecuting attorney or a deputy prosecuting attorney in another county is not disqualified from continuing to serve as special prosecutor. *State ex rel. Griffin v. Lawler*, 659 N.E.2d 514 (Ind. 1995).

Petition.**—Dismissal.**

A dismissal under TR. Rule 12 (B)(6) is appropriate for a petition which requests the appointment of a special prosecutor under IC 33-14-1-6(b)(2). *Williams v. Newman*, 686 N.E.2d 857 (Ind. App. 1997).

—Motion Overruled.

The court did not err when it overruled a consolidated motion for a change of venue and the appointment of a special prosecutor, where, in his attempted affirmation, the defendant simply stated: "I hereby affirm that the above is true and correct, all to my own information, knowledge and personal belief," and did not comply with Rule TR. 11(B), in that he made no statement that the affirmation was made under penalties of perjury. *Jones v. State*, 517 N.E.2d 405 (Ind. 1988).

—Sufficient.

Petition for appointment of special prosecutor sufficiently alleged that elected prosecutor may have had a conflict of interest based upon divided loyalties, and a hearing on the petition was appropriate. *Williams v. Newman*, 686 N.E.2d 857 (Ind. App. 1997).

Collateral References. Disqualification of prosecuting attorney in state criminal case

on account of relationship with accused. 42 A.L.R.5th 581.

33-14-1-7. Conditions for withholding prosecution — Disposition of money collected as user's fees — Confidential form. — (a) A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

(b) An agreement under subsection (a) may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-19-5-1;
- (2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;
- (3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;
- (4) support the person's dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;

(6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;

(7) report to the prosecuting attorney at reasonable times;

(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and

(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

(c) An agreement under subsection (a)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(d) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(e) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

(f) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (b)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk. [IC 33-14-1-7, as added by Acts 1982, P.L. 196, § 1; P.L.171-1984, § 63; P.L.192-1986, § 28; P.L.305-1987, § 24; P.L.53-1989, § 3; P.L.137-1992, § 1; P.L.23-1994, § 9; P.L.1-1998, § 187.]

Effective Dates. P.L.137-1992, § 5. July 1, 1995. P.L.23-1994, § 9. July 1, 1995.

33-14-1-8. Prosecutor to inform employer of charge. — A prosecuting attorney who charges a person with committing any of the following shall inform the person's employer of the charge, unless the prosecuting attorney determines that the person charged does not work with children:

(1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(3) Child molesting (IC 35-42-4-3).

(4) Child exploitation (IC 35-42-4-4(b)).

(5) Vicarious sexual gratification (IC 35-42-4-5).

(6) Child solicitation (IC 35-42-4-6).

(7) Child seduction (IC 35-42-4-7).

(8) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age. [P.L.11-1994, § 13.]

CHAPTER 2

PROSECUTING ATTORNEYS AND THEIR DEPUTIES EMPOWERED TO ADMINISTER OATHS

SECTION.

33-14-2-1. Administering oaths.

33-14-2-1. Administering oaths. — All prosecuting attorneys and their deputies are hereby authorized and empowered to administer all oaths that may be found convenient and necessary to be administered in the discharge of their official duties, and all oaths so administered shall be without any charge or expense whatever. [Acts 1901, ch. 30, § 1, p. 38.]

NOTES TO DECISIONS

In General.

Prosecuting attorneys have authority to administer oaths to persons who make affidavits for the purpose of causing the issue of search warrants to search for intoxicating liquors that are believed to be kept for unlawful purposes. *Steward v. State*, 180 Ind. 397, 103 N.E. 316 (1913). See also *Lencionia v. State*, 200 Ind. 528, 164 N.E. 271 (1928).

Affidavit instituting criminal prosecution was not invalidated by not bearing seal of prosecuting attorney, since seal of prosecutor or his deputy is unnecessary on affidavits verified before him in official capacity, but only where he acts as notary. *Roberts v. State*, 190 Ind. 232, 130 N.E. 125 (1921); *Kaminski v. State*, 91 Ind. App. 160, 168 N.E. 612 (1929).

CHAPTER 3

ASSISTANCE IN PROCURING A LIQUOR LICENSE PROHIBITED

SECTION.

33-14-3-1. Liquor licenses — Prosecuting attorneys and city judges pro-

hibited from representing applicant — Penalty.

33-14-3-1. Liquor licenses — Prosecuting attorneys and city judges prohibited from representing applicant — Penalty. — It is a Class B misdemeanor for a prosecuting attorney, deputy prosecuting attorney, or judge of any city court to recklessly act as attorney, agent, or counsel for the applicant in any proceeding to procure a license to retail or wholesale intoxicating liquors under the laws of this state, or aid or assist in any manner in the procuring of such a license. [Acts 1901, ch. 133, § 1, p. 305; 1913, ch. 271, § 1, p. 738; 1978, P.L. 2, § 3305.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

Collateral References. Constitutionality and construction of statute against public attorney representing private person in civil action. 82 A.L.R.2d 774.

Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law. 6 A.L.R.3d 562.

CHAPTER 4

TRAVEL EXPENSES — CRIMINAL ACTIONS

SECTION.

33-14-4-1. Depositions — Traveling expenses of prosecutor.

33-14-4-1. Depositions — Traveling expenses of prosecutor. — The expenses necessarily incurred by any prosecuting attorney in traveling to attend the taking of any deposition in connection with any criminal action in which such prosecuting attorney appears as such, shall be paid to him out

of any money in the county treasury of the county where such case is pending, and not otherwise appropriated; such payment shall be made on the order of the judge trying the cause as a part of the expense and costs of such trial: Provided, That if such case came from another county on a change of venue, the same shall be collected from such other county as other costs are collected in such case. The court shall make to such prosecuting attorney such allowance for such expenses deemed just after such prosecuting attorney shall have filed with the clerk of such court an itemized statement of such expenses, duly verified. [Acts 1913, ch. 5, § 1, p. 10.]

Cross References. Authority to take depositions, IC 33-14-5-1.

CHAPTER 5

PROSECUTING ATTORNEYS MAY ACT AS NOTARIES PUBLIC

SECTION.	SECTION.
33-14-5-1. Authority to act.	33-14-5-4. Fees — Violations.
33-14-5-2. Seal required.	
33-14-5-3. Certificate of expiration — Jurisdiction.	

33-14-5-1. Authority to act. — All prosecuting attorneys and their deputies of the state of Indiana may take acknowledgments to deeds, or other instruments in writing, administer oaths, protest notes and checks, take the deposition of a witness, [to] take and certify affidavits and depositions, and perform any duty now conferred upon a notary public by the statutes of Indiana. And acknowledgments to deeds or other instruments taken by any prosecuting attorney and his deputies shall entitle such deeds or other instruments to be recorded the same as though acknowledged before a notary public. [Acts 1919, ch. 29, § 1, p. 68; 1945, ch. 78, § 1, p. 169.]

Compiler's Notes. The word "to" was placed in brackets by the compiler to indicate surplusage.

33-14-5-2. Seal required. — No prosecuting attorney or his deputies shall be authorized to perform any of the duties mentioned in section 1 [IC 33-14-5-1] of this chapter until he shall have procured such a seal as will stamp upon paper a distinct impression in words or letters sufficiently indicating his official character to which may be added such other device as he may choose. All acts not attested by such seal shall be void. [Acts 1919, ch. 29, § 2, p. 68; 1945, ch. 78, § 2, p. 169; 1981, P.L. 272, § 120.]

33-14-5-3. Certificate of expiration — Jurisdiction. — It shall be the duty of every prosecuting attorney and his deputies performing any of the acts as set forth in this chapter, at the time of signing any certificate of acknowledgment of a deed, mortgage, or other instrument, or any jurat or other official document, to append to such certificate a true statement of the date of the expiration of the commission of such prosecuting attorney. The

jurisdiction of any such prosecuting attorney and his deputies to perform the duties mentioned in this chapter shall be co-extensive with the state of Indiana. [Acts 1919, ch. 29, § 3, p. 68; 1945, ch. 78, § 3, p. 169; 1981, P.L. 272, § 121.]

33-14-5-4. Fees — Violations. — Any such prosecuting attorney and his deputies performing any of [the] acts or duties hereunder shall be entitled to the same fees as those charged by notaries public, and where any act by a notary public would be a violation of the law, it shall likewise be a violation of the law if committed by a prosecuting attorney or his deputies in the performance of any of the duties or acts authorized hereunder. [Acts 1919, ch. 29, § 4, p. 68; 1945, ch. 78, § 4, p. 169.]

Compiler's Notes. The bracketed word "the" in this section was inserted by the compiler.

Cross References. Fees, disposition, see IC 33-14-7-20.

CHAPTER 6

INVESTIGATORS — CERTAIN PROSECUTING ATTORNEYS TO APPOINT

SECTION.

- 33-14-6-1. Investigators in judicial circuits —
Appointment — Duties —
Bond — Compensation.
33-14-6-2. Choice between counties for place

of trial — Investigations by
coroner and law officers —
Modification by agreement.

33-14-6-1. Investigators in judicial circuits — Appointment — Duties — Bond — Compensation. — The prosecuting attorney of any judicial circuit of this state is hereby authorized to appoint one or more investigators with the approval of the county council or councils, who work under the direction of the prosecuting attorney and whose duties shall be to conduct such investigations and assist in the collecting and assembling of such evidence as, in the judgment of the prosecuting attorney, may be necessary for the successful prosecution of any of the criminal offenders of the judicial circuit; any such investigator so appointed shall give bond in the sum of five thousand dollars (\$5,000) and shall have and possess the same police powers within the county authorized by law to all police officers. In each judicial circuit the salary or other compensation to be paid each such investigator shall be set by the county council or councils. In no event shall a county council or councils reduce the number of investigators or compensation of any investigator as heretofore established by law without approval of the prosecuting attorney. [Acts 1935, ch. 305, § 1, p. 1487; 1937, ch. 163, § 1, p. 857; 1949, ch. 171, § 1; 1951, ch. 323, § 1; 1957, ch. 58, § 1; 1961, ch. 185, § 1; 1967, ch. 351, § 1; 1971, P.L. 444, § 1.]

Opinions of Attorney General. The chief investigator for the prosecuting attorney of Lake County does not hold an "elective or appointive" governmental office, so that he was not disqualified from being a member of

the East Chicago board of school trustees. 1954, No. 16, p. 51.

State senator may serve as investigator in prosecutor's office at the same time, since position of investigator is that of an employee,

and not an officer under the Constitution. 1961, No. 7, p. 30.

Investigator in the prosecutor's office is not an officer under the Constitution, and the

taking of an oath by such an investigator as a condition precedent to entering upon his duties is not mandatory. 1961, No. 7, p. 30.

NOTES TO DECISIONS

Refusal to Fund Prohibited.

Although investigator in prosecutor's office was employed with federal funds and not from county funds, after federal funding was discontinued and request was made to county council for the funding of the position of investigator, the previous employment of the

investigator was with the council's approval, and council was prohibited by this section from refusing to fund such position. State ex rel. Schuerman v. Ripley County Council, 182 Ind. App. 616, 395 N.E.2d 867, 72 Ind. Dec. 243 (1979).

33-14-6-2. Choice between counties for place of trial — Investigations by coroner and law officers — Modification by agreement. —

(a) Where the place of trial for commission of an offense, as determined under IC 35-32-2-1, would potentially require a choice between or among counties, then as between or among the coroners and law enforcement officers of those counties, the coroner and law enforcement officers of the county where the offense is discovered have jurisdiction to investigate the offense.

(b) This section may be modified by agreement between or among the prosecuting attorneys of the counties involved. [P.L.191-1986, § 1.]

CHAPTER 7

PROSECUTING ATTORNEYS — SALARY

SECTION.	SECTION.
33-14-7-1. Compensation of prosecuting attorneys and deputies — Payment — Division of salary prohibited — Penalty — Expenses of attending attorney general's conference.	counts — Classification schedule.
33-14-7-2. Appointment and salary of deputies — Operating expenses.	33-14-7-5. Minimum annual salaries — Payments bimonthly.
33-14-7-2.1. [Repealed.]	33-14-7-5.5 — 33-14-7-19. [Repealed.]
33-14-7-3. Salary based on population and gross assessed valuation — Percentage ratio of circuit to whole state.	33-14-7-19.5. Election of full-time status.
33-14-7-4. Determination of unit factors — Duties of state board of ac-	33-14-7-19.6. Full-time status of prosecuting attorney in counties with two cities of the second class — Salary.
	33-14-7-19.7, 33-14-7-19.8. [Repealed.]
	33-14-7-20. Compensation.
	33-14-7-21. Salary schedules — Lowering of classifications.

33-14-7-1. Compensation of prosecuting attorneys and deputies — Payment — Division of salary prohibited — Penalty — Expenses of attending attorney general's conference. — (a) Prosecuting attorneys and their deputies shall receive for their services the compensation provided in this chapter. The minimum compensation of the prosecuting attorneys shall be paid in the manner prescribed in section 5 [IC 33-14-7-5] of this chapter. The compensation of the deputy prosecuting attorneys shall be paid in the manner prescribed in section 2 [IC 33-14-7-2] of this chapter. Any part of the compensation of a prosecuting attorney or a deputy prosecuting

attorney that exceeds the amount, if any, that the state is to pay shall be paid upon a duly itemized and verified claim, filed as required by law, and by warrant issued by the auditor of the county, payable to the respective prosecuting attorney or deputy, upon allowance of such claim by the board of county commissioners. It is a Class B misdemeanor for a deputy to knowingly divide such compensation with the prosecuting attorney or any other officer or person in connection with such employment, or for the prosecuting attorney or any other officer or person to accept any such division of compensation.

(b) The attorney general of the state shall call at least one (1) and not to exceed two (2) conferences of the several prosecuting attorneys, each year, for the purpose of considering, discussing and developing coordinated plans for the enforcement of the traffic and other laws of this state. The date or dates upon which such conferences shall be held shall be fixed by the attorney general. The expenses necessarily incurred by any such prosecuting attorney in attending any such conference, including the actual expense of transportation to and from the place where such conference is held, together with his meals and lodging, shall be paid from the general fund of the county upon the presentation of a duly itemized and verified claim, filed as required by law, and by warrant issued by the county auditor. If there be more than one (1) county in any judicial circuit, the expenses of the prosecuting attorneys incurred by virtue of this subsection shall be paid from the general fund of the respective counties constituting such circuit in the same proportion that the classification factor of each county bears to the classification factor of the judicial circuit as determined according to law by the state board of accounts. [Acts 1959, ch. 277, § 1; 1978, P.L. 2, § 3306; P.L.2-1984, § 9.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

33-14-7-2. Appointment and salary of deputies — Operating expenses. — (a) A prosecuting attorney may appoint one (1) chief deputy prosecuting attorney. The maximum annual salary paid by the state of a chief deputy prosecuting attorney appointed under this subsection is as follows:

- (1) If the prosecuting attorney is a full-time prosecuting attorney appointing a full-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a full-time prosecuting attorney.
- (2) If the prosecuting attorney is a full-time prosecuting attorney appointing a part-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a part-time prosecuting attorney serving the judicial district served by the chief deputy prosecuting attorney.
- (3) If the prosecuting attorney is a part-time prosecuting attorney appointing a full-time chief deputy prosecuting attorney, the annual

salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a full-time prosecuting attorney.

(4) If the prosecuting attorney is a part-time prosecuting attorney appointing a part-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a part-time prosecuting attorney.

(b) The prosecuting attorney in a county in which is located at least one (1) institution operated by the department of correction that houses at least one thousand five hundred (1,500) offenders may appoint two (2) additional deputy prosecuting attorneys. In a county having two (2) institutions, each of which houses at least one thousand five hundred (1,500) offenders, the prosecuting attorney may appoint a third deputy prosecuting attorney.

(c) The prosecuting attorney in a county in which is located an institution operated by the department of correction that houses at least one hundred (100) but less than one thousand five hundred (1,500) adult offenders may appoint one (1) additional deputy prosecuting attorney.

(d) The prosecuting attorney in a county in which is located a state institution (as defined in IC 12-7-2-184) that has a daily population of at least three hundred fifty (350) patients may appoint one (1) additional deputy prosecuting attorney.

(e) The annual salary of a deputy prosecuting attorney appointed under subsections (b) through (d) may not be less than seventy-five percent (75%) of the annual salary of the appointing prosecuting attorney, as determined under section 5 [IC 33-14-7-5] of this chapter as though the prosecuting attorney had not elected full-time status.

(f) The salaries provided in this section shall be paid by the state once every two (2) weeks from the state general fund. There is appropriated annually out of the general fund of the state sufficient funds to pay any such amount as may be necessary. However, the salaries fixed in this chapter are determined to be maximum salaries to be paid by the state. Nothing in this chapter shall limit the power of counties comprising the respective judicial circuits to pay additional salaries upon proper action by the appropriate county officials.

(g) There shall also be appropriated annually by the various county councils for other deputy prosecuting attorneys, investigators, clerical assistance, witness fees, out-of-state travel, postage, telephone tolls and telegraph, repairs to equipment, office supplies, other operating expenses, and equipment an amount as may be necessary for the proper discharge of the duties imposed by law upon the office of the prosecuting attorney of each judicial circuit. [Acts 1959, ch. 277, § 2; 1965, ch. 270, § 1; 1969, ch. 354, § 1; 1971, P.L. 445, § 1; 1972, P.L. 210, § 1; 1974, P.L. 141, § 1; 1980, P.L. 194, § 1; 1982, P.L. 191, § 9; P.L.299-1983, § 7; P.L.2-1984, § 10; P.L.61-1987, § 5; P.L.40-1990, § 53; P.L.1-1992, § 170; P.L.2-1992, § 852; P.L.138-1992, § 1; P.L.1-1993, § 231.]

Effective Dates. P.L.1-1992, § 189, provided that the amendment take effect retroactively to July 1, 1991.

Opinions of Attorney General. The county council does not have the discretion to refuse to appropriate for "investigators, clerical assistance, witness fees, out of state travel, postage, telephone tolls and telegraph, repairs to equipment, office supplies, and other operating expenses, and equipment," an

amount which the prosecuting attorney considers necessary within reasonable standards in order that he discharge the duties imposed by law upon him. If the county council refuses to appropriate the necessary amount, it may be mandated to do so. 1965, No. 36, p. 173.

Cited: State ex rel. Goldsmith v. Superior Court, 270 Ind. 487, 68 Ind. Dec. 241, 386 N.E.2d 942 (1979).

NOTES TO DECISIONS

ANALYSIS

Appropriations by county council.
Council's general discretion subordinated.
Deferred alcohol prosecution program.
Salary limitations.

Appropriations by County Council.

The power to appropriate funds for prosecutors' staffs has been delegated to the county councils. *Brown v. State ex rel. Brune*, 172 Ind. App. 31, 359 N.E.2d 608, 56 Ind. Dec. 160, reh'g denied, 172 Ind. App. 31, 361 N.E.2d 1220, 57 Ind. Dec. 216 (1977).

Mandate does not lie against the council to enforce a claim unless it is based upon a clear legal right or duty involving no discretion. *Brown v. State ex rel. Brune*, 172 Ind. App. 31, 359 N.E.2d 608, 56 Ind. Dec. 160, reh'g denied, 172 Ind. App. 31, 361 N.E.2d 1220, 57 Ind. Dec. 216 (1977).

When overturning an appropriation of the county council the reviewing court must find that the council abused discretion not that the prosecutor made a reasonable request. *Brown v. State ex rel. Brune*, 172 Ind. App. 31, 359 N.E.2d 608, 56 Ind. Dec. 160, reh'g denied, 172 Ind. App. 31, 361 N.E.2d 1220, 57 Ind. Dec. 216 (1977).

Council's General Discretion Subordinated.

The specific prohibition against ter-

minating the position of investigator for the prosecutor or reducing the compensation of the position by the county council alone as provided in IC 33-14-6-1 must take precedence over the general discretion accorded to the county council by this section. *State ex rel. Schuerman v. Ripley County Council*, 182 Ind. App. 616, 395 N.E.2d 867, 72 Ind. Dec. 243 (1979).

Deferred Alcohol Prosecution Program.

Establishment and maintenance of a deferred alcohol prosecution program is beyond the discretion of the prosecutor and mandate against the council for funds was not proper. *Brown v. State ex rel. Brune*, 172 Ind. App. 31, 359 N.E.2d 608, 56 Ind. Dec. 160, reh'g denied, 172 Ind. App. 31, 361 N.E.2d 1220, 57 Ind. Dec. 216 (1977).

Salary Limitations.

Where circuit judge was receiving more than the minimum salary for his county, the amount of the deputy prosecutor's salary to be paid by the state is 75 percent of the minimum salary of the judge and not 75 percent of the judge's total salary; any additional salary of the deputy prosecuting attorney is to be paid by the county. *Loos v. Long*, 416 N.E.2d 874 (Ind. App. 1981).

33-14-7-2.1. [Repealed.]

Compiler's Notes. This section, concerning minimum annual salary of chief deputy

prosecuting attorney, was repealed by P.L.40-1990, § 57.

33-14-7-3. Salary based on population and gross assessed valuation — Percentage ratio of circuit to whole state. — For the purpose of fixing the salaries of the various prosecuting attorneys under this chapter, the several judicial circuits of the state of Indiana are graded on the basis of population and gross assessed valuation and each judicial circuit is set up on the percentage ratio it bears to the state, the whole state being considered as one hundred percent (100%). [Acts 1959, ch. 277, § 3; 1981, P.L. 272, § 122.]

33-14-7-4. Determination of unit factors — Duties of state board of accounts — Classification schedule. — (a) The nine (9) classes of the several judicial circuits of the state as set out in this chapter are based on a unit factor system. The factors are determined by the relations of the judicial circuit to the state as established and certified to each county auditor by the state board of accounts not later than June 20 of any calendar year. They are as follows:

(1) Population.

(2) Gross assessed valuation as shown by the last preceding gross assessed valuation as certified by the various counties to the auditor of the state in the calendar year in which the calculation is made.

(b) The factors for each of the nine (9) classes set out in this chapter shall be obtained as follows:

(1) The population of each judicial circuit shall be divided by the population of the entire state.

(2) The gross assessed valuation of each judicial circuit shall be divided by the gross assessed valuation of the entire state.

(3) The two (2) results thus obtained shall be added together and the sum thus obtained for each judicial circuit shall be divided by two (2).

(4) The final result so obtained, multiplied by one hundred (100), shall determine the classification of each judicial circuit according to the following schedule:

CLASSIFICATION FACTORS

	HIGH	LOW	CLASS
NO LIMIT		8.00	1
ALL UNDER	8.00	2.25	2
ALL UNDER	2.25	1.25	3
ALL UNDER	1.25	.85	4
ALL UNDER	.85	.70	5
ALL UNDER	.70	.60	6
ALL UNDER	.60	.50	7
ALL UNDER	.50	.35	8
ALL UNDER	.35	NO LIMIT	9

[Acts 1959, ch. 277, § 4; 1973, P.L. 314, § 1; P.L.2-1990, § 14.]

Compiler's Notes. Acts 1961, ch. 221 provides that the classification of salary schedules for prosecuting attorneys shall not be lowered below that first fixed by the state board of accounts. See IC 33-14-7-21.

Opinions of Attorney General. Section

5-7-8-1 (now see IC 33-14-7-21) restored, as a "floor," the classification fixed by the state board of accounts as of July 1, 1959, with respect to salary schedules under this section, as of March 9, 1961. 1961, No. 59, p. 367.

33-14-7-5. Minimum annual salaries — Payments bimonthly. —

(a) The annual minimum salary paid by the state to a full-time prosecuting attorney (as defined in section 19.5 [IC 33-14-7-19.5] of this chapter) is equal to the minimum salary of the circuit court judge of the same judicial circuit as the prosecuting attorney.

(b) A prosecuting attorney of a judicial circuit, other than a full-time prosecutor (as defined in section 19.5 of this chapter), is entitled to a

minimum annual salary in an amount equal to sixty percent (60%) of the salary provided in subsection (a), except as provided by subsection (c).

(c) A prosecuting attorney, other than a full-time prosecutor (as defined in section 19.5 of this chapter), of a judicial circuit:

(1) that has a population of less than eighty-five thousand (85,000) and that adjoins any county having a population of more than one hundred sixty thousand (160,000); or

(2) in which is located:

(A) the Indiana state prison, the Pendleton Correctional Facility, the Plainfield Correctional Facility, the Branchville Correctional Facility, or the Putnamville Correctional Facility; or

(B) a state institution (as defined in IC 12-7-2-184) that has a daily population of at least three hundred fifty (350) patients;

is entitled to a minimum annual salary in an amount equal to sixty-six percent (66%) of the salary provided in subsection (a).

(d) The state shall pay, from the state general fund, the minimum annual salary of a prosecuting attorney. The state shall pay the minimum annual salary in equal installments with payments being made once every two (2) weeks. [Acts 1959, ch. 277, § 5; 1973, P.L. 314, § 2; 1977, P.L. 326, § 1; 1979, P.L. 284, § 1; 1982, P.L. 1, § 55; P.L.2-1984, § 11; P.L.295-1985, § 2; P.L.302-1987, § 1; P.L.378-1987(ss), § 13; P.L.5-1988, § 173; P.L.285-1989, § 4; P.L.40-1990, § 54; P.L.2-1992, § 853; P.L.18-1995, § 110; P.L.283-1995, § 1; P.L.12-1996, § 15.]

Effective Dates. P.L.285-1989, § 6. January 1, 1990.

Opinions of Attorney General. Appropriations for 1959 made by the appropriate county officials for additional salaries for prosecuting attorneys prior to the effective date of the 1959 act were valid when made and have not been vacated by any provision of the new act; therefore, counties can continue

to pay to prosecuting attorneys the additional salary for 1959 which had been properly appropriated prior to March 13, 1959, under the 1953 act. In 1960 and thereafter, additional compensation paid to prosecuting attorneys by counties would require proper action by the appropriate county officials. 1959, No. 42, p. 196.

NOTES TO DECISIONS

ANALYSIS

Basis for salaries.
Incentive payments.

Basis for Salaries.

Where circuit judge was receiving more than the minimum salary for his county, the amount of the prosecutor's salary to be paid by the state under subsection (c)(2) of this section is 66 percent of the minimum salary of

the judge and not 66 percent of the judge's total salary. *Loos v. Long*, 416 N.E.2d 874 (Ind. 1981).

Incentive Payments.

Prosecuting attorney was entitled to receive incentive payments for enforcement and collection of child support, as additional salary from the operating budget, without the approval of the county council. *Plummer v. Hegel*, 535 N.E.2d 568 (Ind. App. 1989).

33-14-7-5.5 — 33-14-7-19. [Repealed.]

Compiler's Notes. These sections, concerning the source for payments and salaries and minimum annual salaries for prosecuting attorneys, were repealed by Acts 1974, P.L.

141, § 3, Acts 1977, P.L. 326, § 3, and P.L.2-1984, § 18. For present law, see IC 33-14-7-4 and IC 33-14-7-5.

33-14-7-19.5. Election of full-time status. — (a) Except as provided in section 19.6 [IC 33-14-7-19.6] of this chapter, any prosecuting attorney may elect to devote the prosecuting attorney's full professional time to the duties of the office of prosecuting attorney by filing written notice of such election with the circuit court of the prosecuting attorney's judicial circuit and the auditor of state. The election may be made annually during the prosecuting attorney's term. However, the notice of election must be made before June 30 of the applicable year. An election is effective for each successive year of the term unless it is revoked before June 30 of the year during which the prosecuting attorney wants to change the prosecuting attorney's status. However, only one (1) change in status may be made during the term. A revocation is made by the prosecuting attorney by filing a written notice with the circuit court of the prosecuting attorney's judicial circuit and the auditor of state.

(b) In the event an election to be a full-time prosecuting attorney is made, the prosecuting attorney shall:

- (1) Devote the prosecuting attorney's full professional time to the prosecuting attorney's office; and
- (2) Not engage in the private practice of law.

(c) If a prosecuting attorney of a judicial circuit of the sixth through ninth class elects to become a full-time prosecuting attorney and the majority of the county council consents to the election then a copy of the consent must be filed with the notice of election to full-time status with the circuit court of the prosecuting attorney's circuit and with the auditor of state. [IC 33-14-7-19.5, as added by Acts 1971, P.L. 445, § 16; 1972, P.L. 210, § 3; 1973, P.L. 314, § 4; 1975, P.L. 314, § 1; 1977, P.L. 326, § 2; 1979, P.L. 284, § 2; P.L.158-1983, § 2; P.L.1-1990, § 324; P.L.18-1995, § 111; P.L.283-1995, § 2.]

Res Gestae. Attorneys and Their Ethics, 23 Res Gestae 34.

Opinions of Attorney General. In order to retain his full-time status, a prosecuting attorney of a judicial circuit of the first through the fifth classes must refile, after January 1, 1980, his election to devote full time to the duties of the office of prosecuting attorney. 1979, No. 79-23, p. 74.

Any prosecuting attorney of a judicial circuit of the sixth through the ninth classes who elected to devote his full professional time to the duties of the office of prosecuting attorney prior to March 1, 1979, shall be permitted to continue full-time until the expiration of his current term or any subsequent consecutive term to which he is elected without refiling. 1979, No. 79-23, p. 74.

33-14-7-19.6. Full-time status of prosecuting attorney in counties with two cities of the second class — Salary. — Beginning January 1, 1979, the prosecuting attorney of each judicial circuit of the second class within a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) shall devote his full professional time to the duties of his office. He may not engage in the private practice of law for the term for which he was elected or appointed, and he shall be paid a minimum annual salary that is no less than the salary of the judge of the circuit court of the same judicial circuit. [IC 33-14-7-19.6, as added by Acts 1975, P.L. 314, § 2; P.L.12-1992, § 138.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 200,000 but less than 300,000 is St. Joseph.

33-14-7-19.7, 33-14-7-19.8. [Repealed.]

Compiler's Notes. These sections, concerning the election of full-time status by a prosecuting attorney of a judicial circuit of the sixth class that adjoins a county containing a consolidated city, and by a prosecuting attorney

of a judicial circuit of the sixth class in Orange, Greene, and Daviess counties, were repealed by P.L.18-1995, § 113, effective May 10, 1995, and by P.L.283-1995, § 3, effective May 10, 1995.

33-14-7-20. Compensation. — (a) The compensation provided in this chapter for the various prosecuting attorneys and their deputies shall be in full for all services required by law. The various prosecuting attorneys shall appear in all courts and in all cases where the law provides that they shall appear.

(b) In all judicial circuits the prosecuting attorney, deputy prosecuting attorneys, and investigators shall be allowed, for the miles necessarily traveled in the discharge of their duty, a sum for mileage equal to that sum per mile paid to state officers and employees, with the rate changing each time the state government changes its rate per mile, said mileage to be allowed by the board of county commissioners on a claim duly filed monthly by the prosecutor, deputy prosecuting attorneys, and investigators itemizing the specific mileage traveled. The mileage of the prosecuting attorneys shall be paid by the county in which the duty arose which necessitated the travel. Nothing contained in this chapter shall prevent the payment of other expenses as may be allowed by law. In the event any board of county commissioners does not furnish the prosecuting attorney with office space the county council shall appropriate a reasonable amount of money per year to the prosecuting attorney for office space. [Acts 1959, ch. 277, § 19; 1965, ch. 270, § 15; 1969, ch. 354, § 15; 1971, P.L. 445, § 17; 1973, P.L. 315, § 1; 1975, P.L. 15, § 36; 1977, P.L. 358, § 5; 1980, P.L. 117, § 8; 1981, P.L. 108, § 36; 1982, P.L. 32, § 4; P.L.171-1984, § 64.]

Cross References. Portion of fee deposited in continuing law enforcement training fund, IC 5-2-1-13.

Opinions of Attorney General. The act is an original act providing for a new compensation schedule for prosecuting attorneys. It specifically repealed Acts 1953, ch. 270 and reenacted many of the provisions of the former law. The fact that the repealed law contained provision for fees to prosecuting attorneys in noncontested divorce actions and the present law does not, does not revive § 3-1214 in that respect. 1959, No. 14, p. 70.

There being no present provision in the laws of this state for prosecuting attorney's fees to be taxed as costs in noncontested divorce actions, although it remains the duty of the prosecuting attorney to appear in such actions, no fee may be taxed as costs for such services. 1959, No. 14, p. 70.

No costs or fees could be taxed by magistrate courts in criminal convictions pursuant to this section in view of Acts 1965, ch. 433, § 7 (since repealed). 1965, No. 14, p. 65.

A county council may be mandated to appropriate for office space the amount a prosecuting attorney finds is necessary within reasonable standards for him to fulfill his constitutional duties. 1965, No. 36, p. 173.

The law enforcement training board has the authority to commit to the use of the law enforcement academy building fund such funds as are received from prosecutors' fees before and after June 30, 1973, without further legislation, if the board acts prior to June 30, 1973, to commit said funds by entering into an agreement to acquire land or interests in land as it is statutorily empowered to do. 1972, No. 13, p. 37.

33-14-7-21. Salary schedules — Lowering of classifications. — The classification of salary schedules for prosecuting attorneys may not be lowered below the classification first fixed by the state board of accounts under this chapter. [P.L.5-1988, § 174.]

CHAPTER 8

PROSECUTING ATTORNEYS COUNCIL

SECTION.

33-14-8-1. Creation.

33-14-8-2. Board of directors.

33-14-8-3. Employees.

SECTION.

33-14-8-4. Functions and duties.

33-14-8-5. Drug prosecution fund.

33-14-8-1. Creation. — There is hereby created a prosecuting attorneys council of Indiana. Its membership shall consist of all of the prosecuting attorneys and their chief deputies duly acting in the state of Indiana. [IC 33-14-8-1, as added by Acts 1973, P.L. 316, § 1.]

33-14-8-2. Board of directors. — The activities of the council shall be directed by a ten (10) member board of directors duly elected by the entire membership of the council. [IC 33-14-8-2, as added by Acts 1973, P.L. 316, § 1.]

33-14-8-3. Employees. — The council shall have the authority to employ an executive director, staff, and clerical assistants necessary to fulfill the purposes of the council. [IC 33-14-8-3, as added by Acts 1973, P.L. 316, § 1.]

33-14-8-4. Functions and duties. — The council shall assist in the coordination of the duties of the prosecuting attorneys of the state and their staffs; prepare manuals of procedure; give assistance in preparation of the trial briefs, forms and instructions; conduct research and studies that would be of interest and value to all prosecuting attorneys and their staffs; and maintain liaison contact with study commissions and agencies of all branches of local, state and federal government that will be of benefit to law enforcement and the fair administration of justice in this state. [IC 33-14-8-4, as added by Acts 1973, P.L. 316, § 1.]

33-14-8-5. Drug prosecution fund. — (a) The drug prosecution fund is established. The council shall administer the fund. Expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The council may use money from the fund to provide assistance to prosecuting attorneys to:

- (1) investigate and prosecute violations of IC 35-48;
- (2) bring actions for forfeiture, law enforcement costs, and correction costs under IC 34-24-1;
- (3) bring actions for civil and criminal remedies for a violation of IC 35-45-6; and

(4) obtain training, equipment, and technical assistance that would enhance the ability of prosecuting attorneys to reduce illegal drug activity.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a fiscal year does not revert to the state general fund. [P.L.51-1989, § 4; P.L.1-1998, § 188.]

CHAPTER 9

PROSECUTING ATTORNEYS RETIREMENT FUND

SECTION.

33-14-9-1. Applicability of chapter.

33-14-9-1.5. "Americans with Disabilities Act" defined.

33-14-9-2. "Board" defined.

33-14-9-3. "Fiscal year" defined.

33-14-9-4. "Fund" defined.

33-14-9-5. "Participant" defined.

33-14-9-6. "Salary" defined.

33-14-9-7. "Services" defined.

33-14-9-8. Establishment of fund — Sources.

33-14-9-9. Purpose of fund.

33-14-9-10. Administration of fund — Powers and duties of board.

33-14-9-11. Contributions to fund.

33-14-9-12. Withdrawal from fund.

33-14-9-12.5. Interest — Proportional interest credit.

33-14-9-13. Termination of participant — Retirement benefits.

SECTION.

33-14-9-14. Retirement benefit — Amount.

33-14-9-15. Disability benefits.

33-14-9-16. Amount of disability benefit.

33-14-9-17. Surviving spouse — Benefit.

33-14-9-18. Dependent children — Benefit.

33-14-9-19. Survivors not entitled to benefits — Withdrawal from fund.

33-14-9-20. Compliance with Internal Revenue Code.

33-14-9-21. Appropriations.

33-14-9-22. Election of direct rollover of eligible distributions.

33-14-9-23. Family and Medical Leave Act — Uniformed Services Employment and Reemployment Rights Act.

33-14-9-1. Applicability of chapter. — This chapter applies only to:

- (1) An individual who serves as a prosecuting attorney or chief deputy prosecuting attorney on or after January 1, 1990; and
- (2) A participant employed in a position described in section 7(2) or 7(3) [IC 33-14-9-7(2) or IC 33-14-9-7(3)] of this chapter who serves in the position after June 30, 1995. [P.L.62-1989, § 3; P.L.67-1995, § 2.]

33-14-9-1.5. "Americans with Disabilities Act" defined. — As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act. [P.L.4-1992, § 19.]

33-14-9-2. "Board" defined. — As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund. [P.L.62-1989, § 3.]

33-14-9-3. "Fiscal year" defined. — As used in this chapter, "fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the following year. [P.L.62-1989, § 3.]

33-14-9-4. "Fund" defined. — As used in this chapter, "fund" refers to the prosecuting attorneys retirement fund created by this chapter. [P.L.62-1989, § 3.]

33-14-9-5. "Participant" defined. — As used in this chapter, "participant" means a person serving in a position described in section 7 [IC 33-14-9-7] of this chapter who is participating in the fund. [P.L.62-1989, § 3; P.L.67-1995, § 3.]

33-14-9-6. "Salary" defined. — As used in this chapter, "salary" means the salary paid to a participant by the state, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code. The term does not include an amount paid to a participant by a county or counties. [P.L.62-1989, § 3; P.L.5-1992, § 11.]

33-14-9-7. "Services" defined. — As used in this chapter, "services" means the period beginning on the first day upon which a person first became:

- (1) A prosecuting attorney or chief deputy prosecuting attorney;
- (2) Any other deputy prosecuting attorney who is:
 - (A) Appointed under IC 33-14-7-2; and
 - (B) Paid by the state from the state general fund; or
- (3) The executive director or the assistant executive director of the prosecuting attorneys council of Indiana;

whether that date is before, on, or after January 1, 1990, and ending on the date under consideration, including all intervening employment in a position described in subdivisions (1) through (3). If an individual is elected or appointed to a position described in subdivisions (1) through (3) and serves one (1) or more terms or part of a term, then retires from office, but at a later period or periods is appointed or elected and serves in a position described in subdivisions (1) through (3), the individual shall pay into the fund during all the periods that the individual serves in that position, except as otherwise provided in this chapter, whether the periods are connected or disconnected. [P.L.62-1989, § 3; P.L.67-1995, § 4.]

33-14-9-8. Establishment of fund — Sources. — The prosecuting attorneys retirement fund is established. The fund consists of the following:

- (1) Each participant's contributions to the fund.
- (2) All gifts, grants, devises, and bequests in money, property, or other form made to the fund.
- (3) All interest on investments or on deposits of the funds.
- (4) A contribution or payment to the fund made in a manner provided by the general assembly. [P.L.62-1989, § 3.]

33-14-9-9. Purpose of fund. — The fund shall be construed to be a trust, separate and distinct from all other entities, maintained for the purpose of:

- (1) Securing payment of benefits to the participants and their beneficiaries; and

(2) Payment of the costs of administering this chapter.
[P.L.62-1989, § 3.]

33-14-9-10. Administration of fund — Powers and duties of board.

— (a) The board shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under this chapter.

(2) In accordance with the powers and duties granted the board in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter.

(c) A determination by the board may be appealed under IC 4-21.5.

(d) The powers and duties of:

(1) The director and the actuary of the board;

(2) The treasurer of state;

(3) The attorney general; and

(4) The auditor of state;

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(e) The board may hire additional personnel, including hearing officers, to assist in the implementation of this chapter. [P.L.62-1989, § 3; P.L.5-1990, § 20.]

33-14-9-11. Contributions to fund. — (a) Except as provided in subsection (b), each participant shall make contributions to the fund as follows:

(1) A participant described in section 7(1) [IC 33-14-9-7(1)] of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after December 31, 1989.

(2) A participant described in section 7(2) or 7(3) [IC 33-14-9-7(2) or IC 33-14-9-7(3)] of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after June 30, 1994.

A participant's contributions shall be deducted from the participant's monthly salary by the auditor of state and credited to the fund.

(b) The state may pay the contributions for a participant. [P.L.62-1989, § 3; P.L.67-1995, § 5.]

33-14-9-12. Withdrawal from fund. — (a) A participant who:

(1) Ceases service in a position described in section 7 [IC 33-14-9-7] of this chapter, other than by death or disability; and

(2) Is not eligible for a retirement benefit under this chapter;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon withdrawal the participant is entitled to receive the total sum contributed plus interest at the rate of five and one-half percent (5.5%) compounded annually, payable not later than sixty (60) days from the date of the withdrawal application.

(b) Notwithstanding section 7 [IC 33-14-9-7] of this chapter, a participant who withdraws from the fund under subsection (a) and becomes a participant again at a later date is not entitled to service credit for years of service before the withdrawal. [P.L.62-1989, § 3; P.L.67-1995, § 6.]

33-14-9-12.5. Interest — Proportional interest credit. — (a) Interest shall be credited annually on June 30 at the rate of five and one-half percent (5.5%) on all amounts credited to the member as of June 30 of the preceding year.

(b) Contributions begin to accumulate interest at the beginning of the fiscal year after the year in which the contributions are due.

(c) When a member retires or withdraws, a proportional interest credit determined under this chapter shall be paid for the period elapsed since the last date on which interest was credited. [P.L.22-1993, § 8.]

33-14-9-13. Termination of participant — Retirement benefits. — A participant whose employment in a position described in section 7 [IC 33-14-9-7] of this chapter is terminated is entitled to a retirement benefit computed under section 14 or 16 [IC 33-14-9-14 or IC 33-14-9-16] of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

(1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board and the retirement date is:

(A) After the cessation of the participant's service;

(B) On the first day of a month; and

(C) Not more than six (6) months before the date the application is received by the board.

However, if the board determines that a participant is incompetent to file for benefits and choose a retirement date, the retirement date may be any date that is the first of the month after the time the participant became incompetent.

(2) The participant:

(A) Is at least sixty-two (62) years of age and has at least ten (10) years of service credit; or

(B) Meets the requirements for disability benefits under section 15 [IC 33-14-9-15] of this chapter.

(3) The participant is not receiving and is not entitled to receive any salary for services currently performed. [P.L.62-1989, § 3; P.L.67-1995, § 7.]

33-14-9-14. Retirement benefit — Amount. — (a) This section does not apply to a participant who meets the requirements for disability benefits under section 15 [IC 33-14-9-15] of this chapter.

(b) Except as provided in subsections (c) and (d), the amount of the annual retirement benefit to which a participant who applies for a retirement benefit and who is at least sixty-five (65) years of age is entitled equals the product of:

- (1) The highest annual salary that was paid to the participant before separation from service; multiplied by
- (2) The percentage prescribed in the following table:

TABLE	
Participant's Years of Service	Percentage
Less than 10	0
10	25%
11	27.5%
12	30%
13	32.5%
14	35%
15	37.5%
16	40%
17	42.5%
18	45%
19	47.5%
20 or more	50%

(c) If a participant who applies for a retirement benefit is not at least sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant was sixty-five (65) years of age reduced by one-fourth percent (0.25%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday.

(d) Benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement fund.

(e) In the event benefits payable from the public employees' retirement fund exceed the benefits payable from the prosecuting attorneys retirement fund, the participant is entitled at retirement to withdraw from the prosecuting attorneys retirement fund the total sum contributed plus interest at the rate of five and one-half percent (5.5%) compounded annually. [P.L.62-1989, § 3; P.L.25-1994, § 10; P.L.67-1995, § 8.]

33-14-9-15. Disability benefits. — (a) Except as provided in subsection (b), a participant who becomes disabled while in active service in a position described in section 7 [IC 33-14-9-7] of this chapter may retire for the duration of the disability if:

- (1) The participant has at least five (5) years of creditable service;
- (2) The participant has qualified for Social Security disability benefits and has furnished proof of the Social Security qualification to the board; and

(3) At least once each year until the participant reaches age sixty-five (65) a representative of the board verifies the continued disability.

For the purposes of this section, a participant who has qualified for disability benefits under the federal civil service system is considered to have met the requirement of subdivision (2) if the participant furnishes proof of the qualification to the board.

(b) Benefits may not be provided under this chapter for any disability:

(1) Resulting from an intentionally self-inflicted injury or attempted suicide while sane or insane;

(2) Resulting from the participant's commission or attempted commission of a felony; or

(3) That begins within two (2) years after a participant's entry or reentry into active service in a position described in section 7 of this chapter and that was caused or contributed to by a mental or physical condition that manifested itself before the participant entered or reentered active service.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated to prove that an individual is qualified for disability benefits under this section shall be:

(1) Kept in separate medical files for each member; and

(2) Treated as confidential medical records.

[P.L.62-1989, § 3; P.L.4-1992, § 20; P.L.67-1995, § 9.]

Compiler's Notes. The Americans with Disabilities Act, referred to in subsection (c) above, may be found at 42 U.S.C. § 12101 et seq.

Effective Dates. P.L.4-1992, § 61, provided that the amendment take effect retroactively to January 26, 1992.

33-14-9-16. Amount of disability benefit. — (a) Except as provided in subsection (b), the amount of the annual benefit payable to a participant who meets the requirements for disability benefits under section 15 [IC 33-14-9-15] of this chapter is equal to the product of:

(1) The annual salary that was paid to the participant at the time of separation from service; multiplied by

(2) The percentage prescribed in the following table:

TABLE	
Participant's Years of Service	Percentage
Less than 5	0
5-10	40%
11	41%
12	42%
13	43%
14	44%
15	45%
16	46%
17	47%

Participant's Years of Service	Percentage
18	48%
19	49%
20 or more	50%

(b) Benefits payable to a participant under this section are reduced by the amounts, if any, that are payable to the participant from the public employees' retirement fund. [P.L.62-1989, § 3.]

33-14-9-17. Surviving spouse — Benefit. — (a) The surviving spouse of a participant who:

- (1) Dies; and
- (2) On the date of death:
 - (A) Was receiving benefits under this chapter;
 - (B) Had completed at least ten (10) years of service in a position described in section 7 [IC 33-14-9-7] of this chapter; or
 - (C) Met the requirements for disability benefits under section 15 [IC 33-14-9-15] of this chapter;

is entitled, regardless of the participant's age, to the benefit prescribed by subsection (b).

(b) The surviving spouse is entitled to a benefit for life equal to the greater of:

- (1) Seven thousand dollars (\$7,000); or
- (2) Fifty percent (50%) of the amount of retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 14(c) [IC 33-14-9-14(c)] of this chapter.

(c) Benefits payable to a surviving spouse under this section are reduced by the amounts, if any, that are payable to the surviving spouse from the public employees' retirement fund as a result of the participant's death. [P.L.62-1989, § 3; P.L.67-1995, § 10.]

33-14-9-18. Dependent children — Benefit. — (a) If a participant's spouse does not survive the participant, the dependent child of a participant is, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 17 [IC 33-14-9-17] of this chapter.

(b) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, that dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 17 of this chapter.

(c) If there is more than one (1) dependent child, then the dependent children are entitled to share the benefit equally.

(d) Each dependent child is entitled to receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(e) Benefits payable to a dependent child are reduced by the amounts, if any, that are payable to the dependent child from the public employees' retirement fund. [P.L.62-1989, § 3.]

33-14-9-19. Survivors not entitled to benefits — Withdrawal from fund. — (a) If no benefits are payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board by the survivors or the participant's estate, the total of the participant's contributions plus interest at the rate of five and one-half percent (5.5%) compounded annually, minus any payments made to the participant, shall be paid to:

- (1) The surviving spouse of the participant;
- (2) Any dependent or dependents of the participant, if a spouse does not survive; or
- (3) The participant's estate, if a spouse or dependent does not survive.

(b) The amount owed a spouse, dependent or dependents, or estate under subsection (a) is payable not later than sixty (60) days from the date of receipt of the withdrawal application. [P.L.62-1989, § 3.]

33-14-9-20. Compliance with Internal Revenue Code. — The fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter:

- (1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter.
- (2) No part of the corpus or income of the fund may be used for or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.
- (3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits a participant would otherwise receive under the retirement fund law.
- (4) If the fund is terminated, or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.
- (5) All benefits paid from the fund shall be distributed in accordance with requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination for purposes of determining any benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

- (6) The board may not:

(A) Determine eligibility for benefits;

(B) Compute rates of contribution; or

(C) Compute benefits of participant's beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits specified by Section 415 of the Internal Revenue Code. If a participant's benefits under this chapter would exceed that maximum benefit, the benefit payable under this chapter shall be reduced as necessary.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The PERF board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code. [P.L.62-1989, § 3; P.L.4-1990, § 14.]

33-14-9-21. Appropriations. — (a) For the purposes of this chapter, there is appropriated for each biennium a sum of money as follows:

(1) From the state general fund, the amount required to actuarially fund participants' retirement benefits, as determined by the board on recommendation of an actuary.

(2) From the fund, the amount required for administration purposes.

(b) The biennial appropriation provided in this section shall be credited to the board annually in equal installments in the month of July of each year of the biennium. [P.L.62-1989, § 3.]

33-14-9-22. Election of direct rollover of eligible distributions. — Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L. 102-318), and any amendments and regulations related to Section 401(a)(31), the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan. [P.L.10-1993, § 13.]

Compiler's Notes. Internal Revenue Code Section 401(a)(31), referred to above, may be found at 26 U.S.C. § 401(a)(31).

33-14-9-23. Family and Medical Leave Act — Uniformed Services Employment and Reemployment Rights Act. — (a) Notwithstanding any provision of this chapter, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes.

(b) Notwithstanding any provision of this chapter, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.). [P.L.5-1997, § 13.]

CHAPTER 10
VICTIM ASSISTANCE PROGRAMS

SECTION.	SECTION.
33-14-10-1. Applicability of chapter.	victim assistance program —
33-14-10-2. “Victim” defined.	Release from liability.
33-14-10-3. Duties of prosecuting attorney.	33-14-10-6. Revocation of defendant’s bond or
33-14-10-4. Contract to operate program.	personal recognizance order.
33-14-10-5. Duties of prosecuting attorney or	

33-14-10-1. Applicability of chapter. — This chapter applies when:

- (1) Law enforcement officials have received a report of an offense within five (5) days after the offense occurred or was discovered, unless the prosecuting attorney finds that the failure to receive a report within the five (5) day period is due to circumstances beyond the control of a victim; and
- (2) A victim fully cooperates with and responds to reasonable requests from law enforcement officials and the prosecuting attorney. [P.L.36-1990, § 5.]

33-14-10-2. “Victim” defined. — As used in this chapter, “victim” means a person who has suffered harm as a result of a criminal offense or a delinquent act. [P.L.36-1990, § 5.]

33-14-10-3. Duties of prosecuting attorney. — A prosecuting attorney shall ensure the following:

- (1) That the full impact of an offense is brought to the attention of the court.
- (2) That victims of offenses are treated with dignity, respect, and sensitivity at all stages of the criminal justice process.
- (3) That the rights of victims are vigorously protected by law enforcement agencies and the office of the prosecuting attorney. [P.L.36-1990, § 5.]

33-14-10-4. Contract to operate program. — A prosecuting attorney may contract with a person to operate a victim assistance program to provide the services required under this chapter. [P.L.36-1990, § 5.]

33-14-10-5. Duties of prosecuting attorney or victim assistance program — Release from liability. — (a) The prosecuting attorney or the victim assistance program shall do the following:

- (1) Inform a victim that the victim may be present at all public stages of the criminal justice process to the extent that:
 - (A) The victim’s presence and statements do not interfere with the defendant’s constitutional rights; and

(B) There has not been a court order restricting, limiting, or prohibiting attendance of the proceedings.

(2) Timely notify a victim of all hearings and proceedings that are scheduled for the matter in which a victim was involved.

(3) Promptly notify a victim when a court proceeding has been rescheduled or cancelled.

(4) Obtain an interpreter or translator, if necessary, to advise a victim of the rights granted to a victim under the law.

(5) Coordinate efforts of local law enforcement agencies that are designed to inform victims promptly after an offense occurs of the availability of, and the application process for, community services for victims, and the families of victims, including information concerning services such as the following:

(A) Victim compensation funds.

(B) Assistance resources.

(C) Legal resources.

(D) Mental health services.

(E) Social services.

(F) Health resources.

(G) Rehabilitative services.

(H) Financial assistance.

(6) Inform a victim that the court may order a defendant convicted of the offense involving the victim to pay restitution to the victim under IC 35-50-5-3.

(7) In a county having a victim-offender reconciliation program (VORP), provide an opportunity for a victim, if the accused person or the offender agrees, to:

(A) Meet with the accused person or the offender in a safe, controlled environment;

(B) Give to the accused person or the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim and the victim's family; and

(C) Negotiate a restitution agreement to be submitted to the sentencing court for damages incurred by the victim as a result of the offense.

(8) Assist a victim in preparing verified documentation necessary to obtain a restitution order under IC 35-50-5-3.

(9) Advise a victim of other rights granted to a victim under the law.

(b) If a victim participates in a victim-offender reconciliation program (VORP) under subsection (a)(7), the victim shall execute a waiver releasing:

(1) The prosecuting attorney responsible for the victim assistance program; and

(2) The victim assistance program;

from civil and criminal liability for actions taken by the victim, an accused person, or an offender as a result of participation by the victim, the accused person, or the offender in a victim-offender reconciliation program (VORP).

(c) A victim is not required to participate in a victim-offender reconciliation program (VORP) under subsection (a)(7). [P.L.36-1990, § 5.]

33-14-10-6. Revocation of defendant's bond or personal recognizance order. — If:

- (1) A victim submits to the prosecuting attorney an affidavit asserting:
 - (A) That an act or threat of physical violence or intimidation has been made against the victim or the immediate family of the victim; and
 - (B) That the act or threat has been made by the defendant or at the direction of the defendant; and
- (2) The prosecuting attorney has reason to believe the allegations in the affidavit are true, and warrant the filing of a motion for bond revocation;

the prosecuting attorney shall file a motion under IC 35-33-8-5 requesting the court to revoke the defendant's bond or order for personal recognizance. [P.L.36-1990, § 5.]

CHAPTER 11

DEFENSE AND INDEMNIFICATION OF PROSECUTING ATTORNEYS FOR CIVIL DAMAGES

SECTION.

33-14-11-1. "Expenses" defined.

33-14-11-2. "Prosecuting attorney" defined.

33-14-11-3. Applicability.

SECTION.

33-14-11-4. Payment of prosecutor's expenses.

33-14-11-1. "Expenses" defined. — As used in this chapter, "expenses" includes the following:

- (1) Reasonable attorney's fees, if the attorney general has authorized the prosecuting attorney to hire private counsel to provide the defense.
 - (2) A judgment.
 - (3) A settlement.
 - (4) Court costs.
 - (5) Discovery costs.
 - (6) Expert witness fees.
 - (7) Any other expense incurred as a result of an action or a proceeding.
- [P.L.136-1992, § 2.]

33-14-11-2. "Prosecuting attorney" defined. — As used in the chapter, "prosecuting attorney" means a prosecuting attorney or deputy prosecuting attorney. [P.L.136-1992, § 2.]

33-14-11-3. Applicability. — This chapter does not apply to a threatened, pending, or completed action or a proceeding that:

- (1) Results in the criminal conviction of; or
- (2) Is a disciplinary action or proceeding against;

a prosecuting attorney. [P.L.136-1992, § 2.]

33-14-11-4. Payment of prosecutor's expenses. — The state shall pay the expenses incurred by a prosecuting attorney from a threatened, pending, or completed action or proceeding that arises from:

- (1) Making;

(2) Performing; or

(3) Failing to make or perform;

a decision, a duty, an obligation, a privilege, or a responsibility of the prosecuting attorney's office. [P.L.136-1992, § 2.]

ARTICLE 15

CLERKS, REPORTERS, AND SHERIFFS OF THE COURTS

CHAPTER.

1. SUPREME COURT CLERK — POWERS AND DUTIES, 33-15-1-1 — 33-15-1-8.
2. SUPREME COURT CLERK — ADDITIONAL DUTIES, 33-15-2-1, 33-15-2-2.
3. [REPEALED.]
4. SUPREME COURT CLERK — INDEXING FILES, 33-15-4-1.
5. SUPREME COURT CLERK — ACCOUNTING FOR FEES COLLECTED, 33-15-5-1 — 33-15-5-5.
6. SUPREME COURT CLERK — APPEAL BONDS, 33-15-6-1 — 33-15-6-3.
7. SUPREME COURT SHERIFF, 33-15-7-1 — 33-15-7-9.

CHAPTER.

- 8-22.5. [REPEALED.]
23. COURT REPORTERS — CIRCUIT, CRIMINAL, SUPERIOR, PROBATE AND JUVENILE COURTS, 33-15-23-1 — 33-15-23-7.
24. COURT REPORTERS — ADDITIONAL POWERS AND DUTIES, 33-15-24-1.
25. COURT REPORTERS — FEES FOR TRANSCRIPTS OF ORAL EVIDENCE, 33-15-25-1, 33-15-25-2.
26. COURT REPORTERS — SALARIES, 33-15-26-1 — 33-15-26-9.

CHAPTER 1

SUPREME COURT CLERK — POWERS AND DUTIES

SECTION.

- 33-15-1-1. Election — Bond — Term.
- 33-15-1-2. Business hours — Duties.
- 33-15-1-3. Allowance for books and stationery.
- 33-15-1-4. Allowance.

SECTION.

- 33-15-1-5. Certification of opinions.
- 33-15-1-6. Inspection of office.
- 33-15-1-7. Books and papers to successor.
- 33-15-1-8. Posting table of fees.

33-15-1-1. Election — Bond — Term. — (a) A clerk of the supreme court shall be elected under IC 3-10-2-7 by the voters of the state. The term of office of the clerk is four (4) years, beginning January 1 following the individual's election.

(b) The clerk shall execute a bond in the sum of two thousand dollars (\$2,000). [2 R.S. 1852, ch. 2, § 1, p. 2; P.L.5-1986, § 30; P.L.8-1995, § 69.]

Compiler's Notes. This section may be superseded as to amount of bond by IC 4-2-2-1.

Cross References. Bonds of state officers amount, IC 4-2-2-1.

Bond provided and paid for by state, IC 5-4-5-1, IC 5-4-5-2.

Court of Appeals, duties as to, IC 33-3-1-3.

33-15-1-2. Business hours — Duties. — The clerk of the supreme court shall do the following:

- (1) Reside, and keep the clerk's office open, in a building provided for that purpose by the state, at the seat of government, from 9 a.m. until 4 p.m. of every day in the year, Sundays and Independence Day excepted.

- (2) Procure and preserve in the office all records and other books and stationery required by the court.
- (3) Attend, in person or by deputy, the terms of the court.
- (4) Administer all oaths authorized by law.
- (5) Sign and seal, with the seal, and issue all process required to be issued from the court, under the clerk's hand.
- (6) Endorse the time of filing books, records, or writings required to be filed or deposited in the clerk's office.
- (7) Make a complete record of all causes finally determined in such court, except the transcript of the court below. [2 R.S. 1852, ch. 2, § 2, p. 2; P.L.4-1991, § 139; P.L.3-1995, § 150.]

Cross References. Holidays and Saturdays, closing office, IC 1-1-9-1, IC 4-1-2-1 — IC 4-1-2-3.

33-15-1-3. Allowance for books and stationery. — On presenting an account therefor, specifying each item thereof to the truth of which he shall take and subscribe an oath, to be administered by some judge of such court, to be thereunto attached, such clerk shall be allowed by such court a reasonable compensation for the record books and stationery furnished by him for the use thereof. [2 R.S. 1852, ch. 2, § 3, p. 2.]

33-15-1-4. Allowance. — Such allowance shall be entered on the order book of such court; and, on a certified transcript thereof, signed by some judge and attested by the seal of such court, being presented to the auditor of state, he shall issue his warrant therefor to the treasurer of state. [2 R.S. 1852, ch. 2, § 4, p. 2.]

33-15-1-5. Certification of opinions. — The clerk shall certify any opinion, decision, and judgment of the supreme court and of the court of appeals to the lower court from which the cause was appealed, under such regulations as may be prescribed by the laws of the state and the rules of the supreme court. The clerk of the court from which the cause was appealed, upon receipt of such certification, shall file the same with the papers in the cause, and that court shall order such opinion, decision, and judgment, including its certification, spread of record in the order book of the court. [2 R.S. 1852, ch 2, § 5, p. 2; Acts 1955, ch. 22, § 1, p. 53; P.L.3-1989, § 205.]

NOTES TO DECISIONS

Trial Court Jurisdiction Prior to Certification.

Where the trial court set a retrial date and denied a motion for change of venue before

the Supreme Court had certified its opinion remanding the case, it did so without jurisdiction. *Wilson v. State*, 472 N.E.2d 932 (Ind. App. 1984).

33-15-1-6. Inspection of office. — Such court shall annually appoint one (1) of the judges thereof to inspect the office of such clerk, and to report, at the next term, the condition of the records and books thereof; which

report shall be entered on the order book of such court. [2 R.S. 1852, ch. 2, § 6, p. 2.]

33-15-1-7. Books and papers to successor. — Such clerk, at the expiration of his term, shall hand over to his successor all the books and papers of his office. [2 R.S. 1852, ch. 2, § 7, p. 2.]

33-15-1-8. Posting table of fees. — The Supreme Court clerk shall post a table of his fees in a conspicuous place in his office. If he fails to post a table of fees, he is not entitled to demand or receive fees for services that he renders. [P.L.171-1984, § 65.]

CHAPTER 2

SUPREME COURT CLERK — ADDITIONAL DUTIES

SECTION.

33-15-2-1. Preservation of records — Cost — Payment.

SECTION.

33-15-2-2. Books and records.

33-15-2-1. Preservation of records — Cost — Payment. — Whenever the Supreme Court, or a majority of the judges thereof, shall deem it necessary for the preservation of the records of said court, or any part thereof, from mutilation or decay, arising from any cause whatever, to have the same transcribed, they shall make an order directing the clerk of said court to transcribe said records in suitable books, to be by him procured for that purpose; and said court shall make such reasonable allowance to said clerk therefor as to them shall seem just and proper; and such compensation, when so allowed and certified by a judge of said court, shall be audited by the auditor of state, and paid as similar allowances in other cases. [Acts 1855, ch. 35, § 1, p. 85.]

33-15-2-2. Books and records. — It shall be the duty of said clerk, whenever the court shall make such order as herein contemplated, to procure such books, and transcribe therein such records, or parts thereof, as said court may order; and such records, when so transcribed, shall have the force and effect of the original records, and transcripts of the same, or parts thereof, duly certified by said clerk, under the seal of said court, shall have the same force and effect as transcripts of the original records. [Acts 1855, ch. 35, § 2, p. 85.]

CHAPTER 3

SUPREME COURT CLERK — DOCKET FEES

33-15-3-1. [Repealed.]

Compiler's Notes. This chapter concerning the payment by the clerk of the Supreme

Court of all docket fees to the treasury of state, was repealed by P.L.286-1989, § 4.

CHAPTER 4

SUPREME COURT CLERK — INDEXING FILES

SECTION.

33-15-4-1. Index of records and papers.

33-15-4-1. Index of records and papers. — The clerk of the Supreme Court be and he is hereby authorized and directed to prepare for public use, under the direction of the Supreme Court, a systematic index to the records and papers on file in the clerk's office of that court, from the organization of the court to the present time, or from 1801 to 1892, showing, among other things, the title and number of every cause appealed to the Supreme Court, the county and court from which appealed, the date of filing the appeal in said office, the date of every decision and how decided, the number of box or drawer in which the papers in every case can readily be found, and the said clerk is also required to properly clean, arrange and securely tie the papers in each cause and place the same in boxes and drawers when the same are provided by the proper authorities for that purpose, and to index such other papers and records on file in said office as may be directed by the Supreme Court, and that when such indexing shall have been complete it is hereby made the duty of such clerk to continue such indexing without further cost or expense to the state. [Acts 1893, ch. 127, § 1, p. 292.]

Cross References. Transcribing records,
IC 33-15-2-1, IC 33-15-2-2.

CHAPTER 5

SUPREME COURT CLERK — ACCOUNTING FOR FEES COLLECTED

SECTION.

33-15-5-1. Taxing fees — Reports — Payment.
33-15-5-2. Fees to be taxed.
33-15-5-2.5. Fee bills.
33-15-5-3. Admission of attorneys — Fee —

SECTION.

Copies of opinions — Docket fee.
33-15-5-4. Quarterly report — Contents.
33-15-5-5. Sheriffs' fees — Unclaimed fees.

33-15-5-1. Taxing fees — Reports — Payment. — The clerk of the Supreme Court, for his services, shall, upon proper books to be kept in his office for that purpose, tax the fees and charge the amounts herein specified, which fees and amounts shall belong to and be the property of the state of Indiana, and said clerk shall quarterly, on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December of each and every year, make and file with the auditor of state a verified account of all such fees and amounts collected during the preceding three (3) months, and shall pay the amount therein shown to be due the state of Indiana to the treasurer of state, and shall, on such dates, file with the treasurer of state a verified report of uncollected fees and amounts due the state of Indiana accruing in cases disposed of during such quarter. [Acts 1907, ch. 66, § 1, p. 92.]

Cross References. Fee-bills, issuing of, IC 33-15-6-1 — IC 33-15-6-3.

NOTES TO DECISIONS

Uncertified Copies of Decisions.

The clerk of the Supreme Court may furnish to applicants uncertified copies of the

decisions of such court at a less rate than the law fixes for certified copies. *Ex parte Brown*, 166 Ind. 593, 78 N.E. 533 (1906).

33-15-5-2. Fees to be taxed. — The clerk of the supreme court shall tax and charge a fee of two hundred fifty dollars (\$250) in each cause filed in either the supreme court or the court of appeals. [Acts 1907, ch. 66, § 2, p. 92; 1957, ch. 145, § 1; P.L.286-1989, § 1.]

Indiana Law Review. 1992 Developments in Indiana Appellate Procedure: Of Timely Praecipes, Interlocutory Appeals, and Civility, 26 Ind. L. Rev. 799 (1993).

Opinions of Attorney General. The payment of the fee for filing a case in the Supreme or Appellate Court cannot be demanded in advance, nor can the fee be taxed until the service has been rendered. Once a case has been filed and the fee taxed and charged on the books, it becomes the clerk's duty to collect it. He is then at liberty to request payment from the filing party and, at

any time before it is paid, to issue a fee bill to the sheriff of the Supreme Court. 1967, No. 17, p. 101.

The fee must be taxed and charged only at the time the case is filed, which is at the time the transcript of the record and assignment of errors are filed, in cases of appeal and review, and at the time the petition for relief is filed in all other cases. The filing of a petition for extension of time in which to file the transcript and assignment of errors is not the filing of a case. 1967, No. 17, p. 101.

NOTES TO DECISIONS

ANALYSIS

In general.

Payment of filing fee as prerequisite to filing appeal.

Proceeding in forma pauperis.

In General.

The clerk of the Supreme Court is not required to furnish, free of charge, copies of the opinions of the Supreme and Appellate Courts to boards or commissions authorized by law. *Ex parte Fitzpatrick*, 171 Ind. 557, 86 N.E. 964 (1909).

Payment of Filing Fee as Prerequisite to Filing Appeal.

The untimely payment and receipt of the filing fee should not be grounds for automatic dismissal of appeal where the record is timely filed. *Brady v. Eastern Ind. Prod. Credit Ass'n*, 396 N.E.2d 335 (Ind. 1978).

Proceeding In Forma Pauperis.

Litigants seeking to proceed on appeal in forma pauperis need only convince the court of their indigency in order to have their application granted. *Campbell v. Criterion Group*, 605 N.E.2d 150 (Ind. 1992).

33-15-5-2.5. Fee bills. — The clerk of the supreme court may, at any time after the services are rendered, issue fee bills under IC 33-19-1-8 for services rendered by the clerk or by another person in the court. [P.L.171-1984, § 66; P.L.192-1986, § 29; P.L.305-1987, § 25.]

33-15-5-3. Admission of attorneys — Fee — Copies of opinions — Docket fee. — (a) The clerk shall charge for making record and certificate of admission of attorneys to practice before the supreme court, a fee of two dollars (\$2). For making and furnishing to any person, firm, limited liability company, or corporation unauthenticated carbon copies of the opinions of the supreme court and the court of appeals for the purpose of publication by the person, firm, limited liability company, or corporation obtaining such

copies, in case a contract has been made by the clerk with the person, firm, limited liability company, or corporation to furnish such copies for a period of at least one (1) year, the clerk shall charge two thousand eight hundred twenty-five dollars (\$2,825) per year, to be paid quarterly in advance.

(b) The clerk of the supreme court may make a contract described in subsection (a).

(c) This section does not prohibit proprietors of newspapers from copying opinions of the supreme court and the court of appeals or from making abstracts of these opinions for publication in the newspapers.

(d) For all other unauthenticated carbon copies of the opinions of the supreme court and the court of appeals furnished by the clerk to any person, firm, limited liability company, or corporation, the clerk shall charge one dollar (\$1) per page.

(e) The fees and amounts charged under this section shall be deposited by the clerk into the state general fund in the manner and at the time provided for the making of the quarterly reports of other collected fees due the state. [Acts 1907, ch. 66, § 3, p. 92; 1957, ch. 145, § 2; P.L.286-1989, § 2; P.L.8-1993, § 500.]

33-15-5-4. Quarterly report — Contents. — The quarterly report required to be made by the clerk shall show the number and title of the cause and the amount due the state. The clerk may not be required, at any time, to make any other or different reports, except special reports on the order of the supreme court or the court of appeals, or the written request of the governor or auditor of state. [Acts 1907, ch. 66, § 4, p. 92; P.L.3-1989, § 206.]

33-15-5-5. Sheriffs' fees — Unclaimed fees. — (a) The clerk of the Supreme Court shall tax and charge in favor of the sheriff of the supreme court, or in favor of county sheriffs for their services, as his deputies, the fees and amounts provided by law, which fees and amounts shall not belong to the state of Indiana, but shall be the property of said sheriff and his agents, and when collected, shall be by said clerk paid over to said sheriff or agents.

(b) Such clerk at the expiration of his term shall hand over to his successor in office all of the books, papers, fees, costs, charges and amounts, together with all moneys and other property received by him by virtue of his office, or under color thereof. It shall be and become the duty of the attorney general to proceed by appropriate action, or otherwise, to enforce the collection, for the use and benefit of the party entitled thereto, of any and all such amounts so collected and retained by such person, including the penalties aforesaid, against any and all persons liable therefor, and all such unclaimed fees collected under this chapter from former clerks that have been paid in for two (2) years, and which remain in the office of the clerk of the Supreme Court of this state for a period of six (6) months uncollected by the person or persons to whom the same are due, and all other unclaimed fees in the hands of the clerk of the Supreme Court of this state, after the expiration of two (2) years from the date when such fees are paid to said clerk, shall be paid into the state treasury, to be held as other funds that

escheat to the state of Indiana. However, it shall be the duty of the clerk of the Supreme Court, when fees are paid into the office of such clerk for the benefit of any other officer or person, to immediately notify such officer or person by mail that such fees are paid into such office, the date of payment, and the amount thereof. [Acts 1907, ch. 66, § 5, p. 92; 1981, P.L. 272, § 123; P.L.131-1983, § 8.]

CHAPTER 6

SUPREME COURT CLERK — APPEAL BONDS

SECTION.

33-15-6-1. Supreme Court — Fee bills and executions from.

SECTION.

33-15-6-2. Indorsement on writ.
33-15-6-3. Time of issuing limited.

33-15-6-1. Supreme Court — Fee bills and executions from. — In all case heretofore or which may be hereafter brought to the Supreme Court of this state by appeal, in which an appeal bond has been or hereafter may be executed by the plaintiff or plaintiffs in such appeal, it shall be the duty of the clerk of said court to tax all fees and costs for which said plaintiff or plaintiffs shall be liable in said court, against the principal and sureties on such bonds, as though they were co-plaintiffs or co-defendants; and to issue fee bills or executions, for the collection of such fees or costs and executions; to collect all judgments which may be rendered by said court against such plaintiffs, against such principals and sureties jointly. [Acts 1855, ch. 50, § 1, p. 116.]

33-15-6-2. Indorsement on writ. — It shall be the duty of the clerk of said court to indorse on such writ, before delivering the same to the proper officer, which of said parties is the principal and which is the surety in said writ; and it shall be the duty of the officer into whose hands the same may come first to levy upon the property of the principal in said writ, if sufficient can be found, if not, he shall then, without delay, levy the same upon the property of the surety or sureties, and proceed to sell the same as in other cases. [Acts 1855, ch. 50, § 2, p. 116.]

33-15-6-3. Time of issuing limited. — No writ, as above provided, shall issue for the collection of any such fees or costs, after five (5) years from the time at which such cause was decided in the Supreme Court. [Acts 1855, ch. 50, § 3, p. 116.]

CHAPTER 7

SUPREME COURT SHERIFF

SECTION.

33-15-7-1. Appointment — Bond — Term.
33-15-7-2. Duties.
33-15-7-3. County sheriffs as deputies.
33-15-7-4. Return of process and money.
33-15-7-5. Mileage and fees.

SECTION.

33-15-7-6. Postage.
33-15-7-7. Coroner as deputy.
33-15-7-8. Penalties and liabilities.
33-15-7-9. Allowance for fuel, stationery, and extra services.

33-15-7-1. Appointment — Bond — Term. — On the second Monday of January, 1853, and every two (2) years thereafter, the Supreme Court shall appoint a sheriff thereof, who shall give bond in the sum of five thousand dollars (\$5,000), with sureties to be approved by such court, and hold his office for two (2) years; and if a vacancy in such office occurs in vacation, any two (2) of the judges of such court may appoint a sheriff to serve until the next term of the court, when such vacancy shall be filled by a vote of a majority of the judges thereof. [2 R.S. 1852, ch. 3, § 1, p. 3.]

Cross References. Bond provided and paid for by state, IC 5-4-5-1, IC 5-4-5-2.

33-15-7-2. Duties. — Such sheriff, by himself or a county police officer, shall attend such court in term time, execute all the orders thereof, preserve order therein, and execute, by himself or a county police officer, all process issued out of such court. [2 R.S. 1852, ch. 3, § 2, p. 3; P.L.131-1983, § 9.]

Cross References. Court of Appeals, duties as to, IC 33-3-1-3.

33-15-7-3. County sheriffs as deputies. — When any process, rule or order, shall come into the hands of such sheriff, he may transmit the same by mail to the sheriff of the county where the same is to be served, and the sheriffs of each county shall be his deputies, but shall be liable on their own bond for all acts done by them as such deputies. [2 R.S. 1852, ch. 3, § 3, p. 3.]

Cross References. Court of Appeals, service of process, IC 33-3-1-5.

NOTES TO DECISIONS

In General.

An execution issued on a judgment rendered in the Supreme Court, when executed by a sheriff of a county, was executed by him as the deputy of the sheriff of the Supreme

Court; but he signed his name to return of process or on notices of sale as sheriff of the county. *Ross v. Banta*, 140 Ind. 120, 34 N.E. 865 (1895).

33-15-7-4. Return of process and money. — Such county sheriff may enclose any process, rule or order of such court which has come to his hands, direct it to the sheriff of the Supreme Court and deposit it in a post office in his county ten (10) days before the return day thereof, when he shall be exonerated from any liability for failing to return such process, rule or order. If any money is to be returned with such process, such county sheriff may transmit the same by mail therewith, but the testimony of the postmaster that the same was duly mailed shall be necessary to exempt him from liability. Provided, That in case of the return of any such process, rule or order of the court by any county sheriff, unserved or unsatisfied, the sheriff of the Supreme Court may visit any such county and personally serve such process, rule or order in the same manner now provided by law for such service by county sheriffs. And, for such service, the said sheriff of the Supreme Court shall receive, for the distance actually traveled in going to

and returning from the county seat of the county where said process, rule or order is to be served, and from said county seat to the place where the same is served, a sum for mileage for each instance equal to that sum per mile paid to state employees and officers plus those other fees allowed by law to county sheriffs, with the rate for mileage to change each time the state government changes its rate per mile, which mileage and fees shall be taxed up as costs in the cause in which such process, rule or order may issue, and shall be collected as other costs. [2 R.S. 1852, ch. 3, § 4, p. 3; Acts 1889, ch. 136, § 1, p. 275; 1975, P.L. 15, § 37.]

33-15-7-5. Mileage and fees. — The mileage and fees for service of any process, rule or order issued out of the Supreme Court shall be the same as in case of similar writs from the circuit court; and when they are served by the county sheriff, he shall be allowed the fees for mileage, and one half ($\frac{1}{2}$) of the fees for service, and the remaining half of the fees for service shall be paid the sheriff of the Supreme Court; fees for mileage shall be charged only from the county seat of the county in which the process is to be served, to the place of service; and when money shall be collected on such process, by the county sheriff, two-thirds ($\frac{2}{3}$) of the poundage thereon shall go to him and the remaining third to the sheriff of the Supreme Court. [2 R.S. 1852, ch. 3, § 5, p. 3.]

33-15-7-6. Postage. — Such sheriff of the Supreme Court shall pay the postage going and returning on such process, and tax and recover the same as part of the costs of the proceeding. [2 R.S. 1852, ch. 3, § 6, p. 3.]

33-15-7-7. Coroner as deputy. — Such sheriff of the Supreme Court may require the coroner of any county to act as such deputy where the sheriff thereof is interested. [2 R.S. 1852, ch. 3, § 7, p. 3.]

33-15-7-8. Penalties and liabilities. — Such sheriff of the Supreme Court shall be subject to all the penalties and liabilities of sheriffs of the circuit courts. [2 R.S. 1852, ch. 3, § 8, p. 3.]

33-15-7-9. Allowance for fuel, stationery, and extra services. — On the sheriff of the Supreme Court filing a statement thereof, specifying each item of his account, to the truth of which he shall have taken and subscribed as [an] oath administered by the clerk of such court, such Supreme Court shall allow such sheriff a reasonable compensation for fuel, stationery and extra services; which allowance shall be entered on the order book of said court; and on the presentation of a certified copy of such order, attested with the seal of such court, to the auditor of state, such auditor shall issue his warrant therefor to the treasurer of state. [2 R.S. 1852, ch. 3, § 9, p. 3.]

Compiler's Notes. The bracketed word "an" in this section was inserted by the compiler to correct an apparent error.

CHAPTER 8

SUPREME COURT REPORTER — ELECTION

33-15-8-1. [Repealed.]

Compiler's Notes. This chapter, concerning the election and term of the Supreme Court reporter, was repealed by P.L.4-1983, § 20.

CHAPTER 9

SUPREME COURT REPORTER — DUTIES

33-15-9-1 — 33-15-9-11. [Repealed.]

Compiler's Notes. This chapter, concerning the duties of the Supreme Court reporter, was repealed by P.L.4-1983, § 20.

CHAPTER 10

SUPREME COURT REPORTER — TRANSFER OF DUTIES FROM
SECRETARY OF STATE**33-15-10-1 — 33-15-10-3. [Repealed.]**

Compiler's Notes. This chapter, concerning the transfer of duties from the secretary of state to the Supreme Court reporter, was repealed by P.L.4-1983, § 20.

CHAPTER 11

CIRCUIT COURT CLERK — POWERS AND DUTIES

33-15-11-1 — 33-15-11-9. [Repealed.]

Compiler's Notes. This chapter, concerning powers and duties of circuit court clerk, was repealed by P.L.171-1984, § 80. For present provisions, see IC 33-17-1-1 — IC 33-17-2-11.

CHAPTER 12

CIRCUIT COURT CLERK — BOND INDEX RECORD

33-15-12-1. [Repealed.]

Compiler's Notes. This chapter, concerning maintenance of official bond index record by circuit court clerk, was repealed by P.L.171-1984, § 80 and P.L.1-1993, § 232, effective May 4, 1993.

CHAPTER 13

CIRCUIT CLERKS — DEMANDS AGAINST EXECUTORS, ADMINISTRATORS OR
GUARDIANS**33-15-13-1. [Repealed.]**

Compiler's Notes. This chapter, concerning demands against executors, administrators or guardians made by circuit court clerks, was repealed by P.L.171-1984, § 80 and, effective February 21, 1992, by P.L. 1-1992, § 171.

CHAPTER 14

CLERKS — BOND REQUIREMENT

33-15-14-1 — 33-15-14-3. [Repealed.]

Compiler's Notes. This chapter, concerning bond requirement of county clerks, was repealed by Acts 1981, P.L. 47, § 26 and

P.L.171-1984, § 80. For present law, see IC 33-17-1-3, IC 33-17-1-4.

CHAPTER 15

CERTAIN SUPERIOR AND CIRCUIT COURT CLERKS — JURIES

33-15-15-1. [Repealed.]

Compiler's Notes. This chapter, concerning additional jurors in certain counties of

150,000 or more, was repealed by Acts 1982, P.L. 1, § 71.

CHAPTER 16

CIRCUIT COURT CLERKS — VACANCIES

33-15-16-1. [Repealed.]

Compiler's Notes. This chapter, concerning vacancies in the office of the circuit court

of any county, was repealed by Acts 1980, P.L. 8, § 3. For present law, see IC 3-13-6-1.

CHAPTER 17

COURT CLERKS — UNCLAIMED MONEY

33-15-17-1 — 33-15-17-8. [Repealed.]

Compiler's Notes. This chapter, concerning unclaimed money remaining in the office of the clerk of any court, was repealed by

P.L.171-1984, § 80. For present law, see IC 32-9-8-1 — IC 32-9-8-5.

CHAPTER 18

CIRCUIT COURT CLERKS — SPECIAL DUTIES

33-15-18-1. [Repealed.]

Compiler's Notes. This chapter, concerning adjourn terms of circuit court and the posting of notices in cases of emergency, was repealed by Acts 1981, P.L. 272, § 146 and

P.L.1-1993, § 232, effective May 4, 1993. For present similar provisions on terms of court for all courts, see IC 33-1-6-1.

CHAPTER 19

CIRCUIT COURT CLERKS — MONTHLY REPORTS TO COUNTY AUDITOR

33-15-19-1 — 33-15-19-3. [Repealed.]

Compiler's Notes. This chapter, concerning monthly reports to county auditor by

circuit court clerks, was repealed by P.L.171-1984, § 80. For present law, see IC 33-17-2-8.

CHAPTER 20

CIRCUIT COURT CLERKS — SUMMONS FOR JURY DUTY

33-15-20-1. [Repealed.]

Compiler's Notes. This chapter, concerning summons for jury duty served by circuit court clerks, was repealed by P.L.171-1984,

§ 80 and, effective February 21, 1992, by P.L.1-1992, § 171. For present law, see IC 33-4-5-9.

CHAPTER 21

SHELBY CIRCUIT COURT CLERK

33-15-21-1 — 33-15-21-3. [Repealed.]

Compiler's Notes. This chapter, concerning Shelby circuit court clerk, was repealed by

P.L.171-1984, § 80. For present law, see IC 33-5-39-9 and IC 33-5-39-10.

CHAPTER 22

CLERKS — JURIES

33-15-22-1 — 33-15-22-4. [Repealed.]

Compiler's Notes. This chapter, concerning court clerks and juries, was repealed by

P.L.171-1984, § 80. For present law, see IC 33-4-5-9, and IC 35-34-2-13 — IC 35-34-2-15.

CHAPTER 22.5

GRAND JURY — EXTENSIONS OF TERM — SPECIAL GRAND JURIES

33-15-22.5-1 — 33-15-22.5-3. [Repealed.]

Compiler's Notes. This chapter, concerning grand jury, extensions of term and special grand juries, was repealed by P.L.171-1984,

§ 80. For present law, see IC 35-34-2-13 — IC 35-34-2-15.

CHAPTER 23

COURT REPORTERS — CIRCUIT, CRIMINAL, SUPERIOR, PROBATE AND JUVENILE COURTS

SECTION.

- 33-15-23-1. Duties — Compensation.
- 33-15-23-2. Eligibility.
- 33-15-23-3. Oath.
- 33-15-23-4. Removal — Vacancies.

SECTION.

- 33-15-23-5. Transcript — Certificate — Fees.
- 33-15-23-6. [Repealed.]
- 33-15-23-7. Repeal.

33-15-23-1. Duties — Compensation. — (a) For the purpose of facilitating and expediting the trial of causes, the judge of each circuit, criminal, superior, probate, and juvenile court of each and every county of this state shall appoint an official reporter, whose duty it shall be, whenever required by such judge, to be promptly present in said court, and to take down in shorthand the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge in respect to the admission

and rejection of evidence and the objections and exceptions thereto, and write out the instructions of the court in jury trials.

(b) In counties in which the circuit or probate court sits as a juvenile court, the official reporter of the circuit court or probate court, as the case may be, shall report the proceedings of the juvenile court as part of his duties as reporter of the circuit or probate court and, except as provided in subsection (c), such reporter shall receive no additional compensation for his services for reporting the proceedings of the juvenile court.

(c) In counties wherein a circuit court has juvenile jurisdiction, and wherein there is a juvenile referee and the circuit judge is the judge of the juvenile court, the salary of the juvenile court reporter shall be one hundred and twenty-five dollars (\$125) per month which shall be in addition to any compensation such reporter may receive as reporter of the circuit court.

(d) The official reporters of juvenile courts shall be paid the same amount for their services and in the same manner, have the same duties and be subject to the same restrictions as is provided for by law for the official reporters of the other courts. However, in a county having a population of more than two hundred fifty thousand (250,000), the judge of the juvenile court may appoint court reporters as necessary for compliance with the law in regard to the reporting of cases and facilitating and expediting the trial of causes, each of whom shall receive a salary of not less than three hundred dollars (\$300) per month. [Acts 1899, ch. 169, § 1, p. 384; 1927, ch. 70, § 1, p. 190; 1951, ch. 248, § 1; 1955, ch. 104, § 1; 1959, ch. 135, § 1; 1963, ch. 198, § 1; P.L.12-1992, § 139.]

Compiler's Notes. According to the 1990 federal census, the counties having a population of more than 250,000 are Allen, Lake, and Marion.

Cross References. Salaries of court reporters, IC 33-15-26-1 — IC 33-15-26-9.

NOTES TO DECISIONS

ANALYSIS

In general.
Closing arguments.
Mechanical recording of testimony.
New trial.

In General.

By this act, the legislature has made it the imperative duty of the court to appoint an official reporter for the purpose of facilitating and expediting the administration of justice, but it has fixed no term of office for the reporter and has authorized the judge to remove him at any time. *Etzold v. Board of County Comm'rs*, 82 Ind. App. 655, 146 N.E. 842 (1924).

Where a court reporter is appointed under the provisions of these sections, his duties and compensation during his period of service are governed thereby. *Etzold v. Board of County Comm'rs*, 82 Ind. App. 655, 146 N.E. 842 (1924).

Closing Arguments.

It was not error for trial court to refuse to have closing arguments of counsel recorded. *Groff v. State*, 415 N.E.2d 721 (Ind. App. 1981).

Mechanical Recording of Testimony.

Where there is no objection to the transcription of testimony by audio recording rather than by a shorthand reporter, any objection relating to the method of transcription is waived. *White v. Crow*, 245 Ind. 276, 198 N.E.2d 222, 3 Ind. Dec. 325 (1964).

New Trial.

Failure to appoint an official reporter is not cause for a new trial unless a request is made of the court for such appointment and refused. *Chicago & S.E. Ry. v. McEwen*, 35 Ind. App. 251, 71 N.E. 926 (1904); *Rudisell v. Jennings*, 38 Ind. App. 403, 77 N.E. 959 (1906).

Collateral References. Court reporter's death or disability prior to transcribing notes as grounds for reversal or new trial. 57 A.L.R.4th 1049.

33-15-23-2. Eligibility. — No person shall be ineligible to such office of shorthand reporter on account of sex. The judge shall not appoint his son or daughter as such reporter. [Acts 1899, ch. 169, § 2, p. 384.]

33-15-23-3. Oath. — At the time of appointment, such reporter shall take an oath before some officer empowered to administer oaths to faithfully perform his or her duties, as such official reporter. [Acts 1899, ch. 169, § 3, p. 384.]

33-15-23-4. Removal — Vacancies. — Such reporter may, at any time, be removed by the judge of the court for which he was appointed, and in every case of vacancy in the office of official reporter, it shall be the duty of the judge of such court to fill the vacancy as soon after its occurrence as practicable. [Acts 1899, ch. 169, § 4, p. 384.]

33-15-23-5. Transcript — Certificate — Fees. — Whenever, in any cause, such reporter shall be requested to do so, he shall furnish to either party a transcript of all or any part of said proceedings required by him to be taken or noted, including all documentary evidence, and it shall be his duty to furnish the same written in a plain legible longhand or typewriting as soon after being requested to do so as practicable, and he shall certify that it contains all the evidence given in the cause: Provided, That the reporter may require payment for such transcript, or that the same be satisfactorily secured, before he proceeds to do the work required of him. [Acts 1899, ch. 169, § 5, p. 384.]

Cited: Moore v. Hill, 121 Ind. App. 686, 98 N.E.2d 189 (1951).

NOTES TO DECISIONS

ANALYSIS

In general.
Poor persons.

In General.

The appellant, upon reversal of the cause, was entitled to recover from his adversary as fees the cost of the manuscript. Wright v. Wilson, 98 Ind. 112 (1884).

It was not the duty of an official reporter to know that time, or what time, has been granted in which to file a bill of exceptions. It was simply her duty to furnish the transcript within the time given her by the person ordering the same, if such time was reason-

able and sufficient. Arcana Gas Co. v. Moore, 8 Ind. App. 482, 36 N.E. 46 (1894).

On the reversal of a cause in the Supreme Court, the appellant can recover the fees paid for a transcript of the evidence. Adams Express Co. v. Welborn, 59 Ind. App. 330, 108 N.E. 163 (1915).

Poor Persons.

The proviso in this section has no application to the situation where the reporter is directed by the trial court to furnish the transcript to a poor person as provided in IC 33-1-4-1. State ex rel. Pappas v. Baker, 209 Ind. 25, 197 N.E. 912 (1935).

33-15-23-6. [Repealed.]

Compiler's Notes. This section, which provided for the salary and fees of court reporters, and set a penalty for reporters charging excessive fees, was repealed by Acts

1978, P.L. 2, § 3308. For present salary provisions, see IC 33-15-26-1 — IC 33-15-26-9. For official misconduct, see IC 35-44-1-2.

33-15-23-7. Repeal. — All laws heretofore existing in reference to the appointment and duties of shorthand reporters are hereby repealed: Provided, That all such acts shall remain in force as to all evidence heretofore taken by shorthand reporters, the same as if the same had not been repealed. [Acts 1899, ch. 169, § 8, p. 384.]

CHAPTER 24

COURT REPORTERS — ADDITIONAL POWERS AND DUTIES

SECTION.

33-15-24-1. Administering oaths — Taking depositions — Bond — Seal.

33-15-24-1. Administering oaths — Taking depositions — Bond — Seal. — (a) Every official circuit, superior, criminal, probate, juvenile, and county court reporter appointed under IC 33-15-23-1 or IC 33-10.5-8-2 is authorized and empowered to:

- (1) Take and certify all acknowledgments of deeds, mortgages, or other instruments of writing required or authorized by law to be acknowledged;
- (2) Administer oaths generally;
- (3) Take and certify affidavits, examinations, and depositions; and
- (4) Perform any duty now conferred upon a notary public by the statutes of the state of Indiana.

(b) Any official reporter taking examinations and depositions shall have the right to:

- (1) Take them in shorthand;
- (2) Transcribe them into typewriting or longhand; and
- (3) Have them signed by the deposing witness.

(c) Before performing any official duty as authorized, an official reporter shall:

- (1) Provide a bond as is required for notary publics; and
- (2) Procure a seal which will stamp a distinct impression indicating his official character, to which may be added any other device as he may choose. [Acts 1923, ch. 13, § 1, p. 51; 1939, ch. 11, § 1, p. 19; 1981, P.L. 285, § 1.]

CHAPTER 25

COURT REPORTERS — FEES FOR TRANSCRIPTS OF ORAL EVIDENCE

SECTION.

33-15-25-1. [Repealed.]

33-15-25-2. Small claims court — Fee for transcript.

33-15-25-1. [Repealed.]

Compiler's Notes. This section, concerning charges of reporters of courts of record for making transcripts, was repealed by P.L.40-1990, § 59.

33-15-25-2. Small claims court — Fee for transcript. — (a) This section applies to the small claims court established under IC 33-11.6.

(b) The person who is designated by a judge of the court to prepare transcripts may collect a fee of no more than five dollars (\$5) for each transcript from a person who requests the preparation of a transcript. [P.L.301-1987, § 4.]

CHAPTER 26

COURT REPORTERS — SALARIES

SECTION.

- 33-15-26-1. Definitions.
- 33-15-26-2. Annual appropriations by county councils.
- 33-15-26-3. Circuits of more than one county — Apportionment of salaries.
- 33-15-26-4. Grading of counties.
- 33-15-26-5. Basis of county classification — Population and assessed valu-

SECTION.

- ation — Classification factors.
- 33-15-26-6. Minimum salaries to be fixed according to counties — Additional authorized.
- 33-15-26-7. Annual salary schedule.
- 33-15-26-8. Population change.
- 33-15-26-9. Construction.

33-15-26-1. Definitions. — As used in this chapter:

- (1) "Official court reporter" shall mean any court reporter who is appointed as the official court reporter by the judge of any circuit, superior, or probate court in the state;
- (2) "Census" shall mean the last preceding United States federal decennial census;
- (3) "State salary" shall mean that part of a court reporter's salary which is paid by the state of Indiana;
- (4) "County salary" shall mean that part of a court reporter's salary which is paid by the county;
- (5) "Salary" shall mean the amount of the state salary and the amount of the county salary added together;
- (6) "Judicial circuit" shall mean any county comprising a single judicial circuit or any combination of one (1) or more counties comprising a single judicial circuit. [Acts 1965, ch. 289, § 1; 1981, P.L. 272, § 139.]

33-15-26-2. Annual appropriations by county councils. — The county councils of the several counties of the state shall appropriate annually a sufficient amount to pay the county salaries authorized by this chapter. [Acts 1965, ch. 289, § 2; 1981, P.L. 272, § 140.]

33-15-26-3. Circuits of more than one county — Apportionment of salaries. — Where a judicial circuit is composed of more than one county, all of the counties comprising such circuit, for the purposes of this chapter, shall be considered as one (1) county; in such event, each county shall pay part of the county salary in the same proportion as its individual classification

factor bears to the classification factor of the judicial circuit. [Acts 1965, ch. 289, § 3; 1981, P.L. 272, § 141.]

33-15-26-4. Grading of counties. — For the purpose of this chapter the several counties of the state are graded on the basis of population and gross assessed valuation, and each county is set up on the percentage ratio it bears to the state, the whole state being considered as one hundred percent (100%). [Acts 1965, ch. 289, § 4; 1981, P.L. 272, § 142.]

33-15-26-5. Basis of county classification — Population and assessed valuation — Classification factors. — (a) The nine (9) classes of the several counties of the state as set out in this chapter are based on a unit factor system. The factors are determined by the relation of the county to the state as established and certified to each county auditor by the state board of accounts not later than July 1 of each year. They are as follows:

- (1) Population.
- (2) Gross assessed valuation, as shown by the last preceding gross assessed valuation, as certified by the various counties to the auditor of state in the calendar year in which the calculation is made.
- (b) The factors for each of the nine (9) classes set out in this chapter shall be obtained as follows:
 - (1) The population of each county shall be divided by the population of the entire state.
 - (2) The gross assessed valuation of each county shall be divided by the gross assessed valuation of the entire state.
 - (3) The two (2) results thus obtained shall be added together and the sum thus obtained for each county shall be divided by two (2).
 - (4) The final result so obtained, multiplied by one hundred (100), shall determine the classification of each county according to the following schedule:

	CLASSIFICATION FACTORS		
	HIGH	LOW	CLASS
No Limit		8.00	1
All under	8.00	2.25	2
All under	2.25	1.25	3
All under	1.25	.85	4
All under	.85	.70	5
All under	.70	.60	6
All under	.60	.50	7
All under	.50	.35	8
All under	.35	No Limit	9

[Acts 1965, ch. 289, § 5; 1981, P.L. 272, § 143; P.L.2-1990, § 15.]

33-15-26-6. Minimum salaries to be fixed according to counties — Additional authorized. — On and after January 1, 1966, the annual salary of each court reporter shall be fixed, as hereinafter provided, according to the county or counties in which he holds office. To such

minimum annual salary the respective county or counties may add additional increments according to the usual budget procedures; by the respective counties; and such salaries shall be paid in equal monthly installments. [Acts 1965, ch. 289, § 6.]

33-15-26-7. Annual salary schedule. — The annual salary of each court reporter shall be:

Class 1	\$7,000.00
Class 2	6,800.00
Class 3	6,500.00
Class 4	6,000.00
Class 5	5,500.00
Class 6	5,200.00
Class 7	5,000.00
Class 8	4,800.00
Class 9	4,500.00

[Acts 1965, ch. 289, § 7.]

33-15-26-8. Population change. — Where the classification of any judicial circuit is changed by reason of change in population as determined by the census, the salaries of the court reporters of such judicial circuit shall thereafter be governed as provided by this chapter for judicial circuits of the population class into which it is so placed: Provided, That no judicial circuit shall be reduced in classification for determining the salary of any court reporter unless the minimum population of any such class on July 1, 1965, was reduced more than five percent (5%) by the last preceding United States federal decennial census. [Acts 1965, ch. 289, § 8; 1981, P.L. 272, § 144.]

33-15-26-9. Construction. — This chapter shall in no way be considered to repeal or amend IC 33-15-23-1. [Acts 1965, ch. 289, § 9; 1981, P.L. 272, § 145.]

ARTICLE 16

NOTARIES PUBLIC

CHAPTER

1. JURISDICTION, 33-16-1-1.
2. QUALIFICATIONS AND POWERS, 33-16-2-1 — 33-16-2-9.
3. REQUIREMENT OF APPENDING DATE OF EXPIRATION OF COMMISSION, 33-16-3-1, 33-16-3-2.
4. ADMINISTERING OATHS, TAKING ACKNOWLEDGMENTS, 33-16-4-1 — 33-16-4-3.

CHAPTER

5. ACKNOWLEDGMENT BY FEDERAL BANK ASSOCIATION OFFICERS AND EMPLOYEES, 33-16-5-1.
6. ACKNOWLEDGMENT BY MEMBER OF CEMETERY ASSOCIATION OF LOT SALES, 33-16-6-1.
7. FEES, 33-16-7-1.
8. TOWNSHIP TRUSTEES; AUTHORITY TO PERFORM NOTARIAL ACTS, 33-16-8-1 — 33-16-8-5.

CHAPTER 1

JURISDICTION

SECTION.

33-16-1-1. Jurisdiction.

33-16-1-1. Jurisdiction. — The jurisdiction of any notary public duly qualified in this state shall be co-extensive with the limits of the state, but no notary shall be compelled to act out of the limits of the county in which he resides. [Acts 1855, ch. 73, § 4, p. 145.]

Cross References. Acknowledgment of deeds and conveyances in foreign countries, IC 32-2-4-1.

Acknowledgment of real property conveyances in other states, IC 32-1-2-20.

Certificates of notaries of other states and territories acceptable in evidence, IC 34-37-1-5.

Fees of notary public, IC 33-16-7-1.

NOTES TO DECISIONS

ANALYSIS

In general.
Acknowledgments.
Depositions.

In General.

Notaries public may act throughout the state. *Melville v. State*, 173 Ind. 352, 89 N.E. 490 (1909).

The presumption arises that a notary acted within his jurisdiction, at least until the contrary is made to appear, in view of this section and IC 33-16-2-4. *Voigt v. Mergenthaler Linotype Co.*, 213 Ind. 325, 12 N.E.2d 498 (1938).

Acknowledgments.

Where a certificate of acknowledgment shows that it was taken in this state, and acknowledged before a person representing himself to be a notary public, and indicating the date of the expiration of his commission, and a seal is affixed showing his official char-

acter as a notary, it is sufficient to admit the instrument to record as an acknowledged instrument. *Voigt v. Mergenthaler Linotype Co.*, 213 Ind. 325, 12 N.E.2d 498 (1938).

A chattel mortgage, the certificate of acknowledgment of which shows that it was taken within this state, and acknowledged before a person representing himself to be a notary public, and indicating the date of the expiration of his commission, with a seal affixed thereto showing his official character as a notary, must be treated as prima facie valid, in view of this section and 33-16-2-4. *Voigt v. Mergenthaler Linotype Co.*, 213 Ind. 325, 12 N.E.2d 498 (1938).

Depositions.

Depositions taken before, and certified by, a notary public of this state, outside his county and state, should be suppressed, since the notary was without jurisdiction. *Frazer v. McMillin & Carson*, 94 Ind. App. 431, 179 N.E. 564 (1932).

CHAPTER 2

QUALIFICATIONS AND POWERS

SECTION.

33-16-2-1. Appointment — Oath — Bond — Fees.

33-16-2-2. Cause for revocation of appointment — Investigation of violations by secretary of state.

33-16-2-3. Appointment — Governor's discretion.

SECTION.

33-16-2-4. Seal required.

33-16-2-5. Powers.

33-16-2-6. Certificate as evidence.

33-16-2-7. Who cannot be a notary public.

33-16-2-8. List of commissioned notaries — Change of name or address.

33-16-2-9. Form of notarization.

33-16-2-1. Appointment — Oath — Bond — Fees. — (a) Any applicant for a commission as a notary public must:

- (1) be at least eighteen (18) years of age; and
- (2) be a legal resident of Indiana.

(b) A notary public shall be appointed and commissioned by the governor. A notary public shall hold office for eight (8) years. A notary public, when so qualified, shall be authorized to act throughout Indiana.

(c) A person may request an application to become a notary public from the secretary of state. The secretary of state shall prescribe a written application form on which a person may apply for a commission as a notary public. The secretary of state may provide an applicant with enhanced access (as defined in IC 5-14-3-2) to an application form that may be completed and submitted to the secretary of state by means of an electronic device. IC 4-5-10 applies to an application form provided by enhanced access under this section. The application form must include the applicant's county of residence, oath of office, and official bond. The application must also contain any additional information necessary for the efficient administration of this chapter.

(d) The applicant shall:

- (1) personally appear with an application form before an officer, authorized by law to administer oaths, who shall administer an oath of office to the applicant; or
- (2) certify on an application form under penalty of perjury that the applicant will abide by the terms of the oath. The secretary of state shall prescribe the manner in which an applicant may complete a certification authorized under subdivision (2).

(e) The applicant shall secure an official bond, with freehold or corporate security, to be approved by the secretary of state in the sum of five thousand dollars (\$5,000). The official bond shall be conditioned upon the faithful performance and discharge of the duties of the office of notary public, in all things according to law, for the use of any person injured by a breach of the condition. The completed application shall be forwarded to the secretary of state. The secretary of state shall forward each commission issued by the governor to the applicant or the applicant's surety company.

(f) The secretary of state shall charge and collect the following fees:

- (1) For each commission to notaries public, five dollars (\$5).
- (2) For each duplicate commission to notaries public, five dollars (\$5).

[1 R.S. 1852, ch. 76, § 1, p. 377; Acts 1855, ch. 73, § 1, p. 145; 1951, ch. 242, § 1; 1955, ch. 343, § 1; 1973, P.L. 96, § 2; 1977, P.L. 34, § 2; 1978, P.L. 23, § 2; P.L.171-1984, § 67; P.L.302-1985, § 1; P.L.5-1988, § 176; P.L.34-1997, § 25; P.L.79-1998, § 100.]

Compiler's Notes. P.L.79-1998, § 113, effective July 1, 1998, provides: "IC 33-16-2-1, as amended by this act, applies only to applicants applying for a commission as a notary public after June 30, 1998."

Cross References. Disqualification as notary, IC 33-16-2-7.

Fees of notary public, IC 33-16-7-1.
 Stating in certificates when term ends, IC 33-16-3-1.
 Surety companies signing bonds, IC 5-4-5-1.

Cited: Richardson v. State, 496 N.E.2d 620 (Ind. App. 1986).

NOTES TO DECISIONS

ANALYSIS

In general.
Minors as notaries.

In General.

Notaries public are liable for a failure to perform the duties that they undertake to perform. *Stott v. Harrison*, 73 Ind. 17 (1880).

Minors as Notaries.

The authority of notaries extends throughout the state of Indiana and they are not required by statute to be 21 years of age. The office is ministerial and does not concern the administration of justice. *United States v. Bixby*, 9 F. 78 (D. Ind. 1881).

Collateral References. 58 Am. Jur. 2d Notaries § 7 et seq.

Liability of notary drawing invalid will to beneficiary named therein. 65 A.L.R.2d 1363.

Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public on his bond for wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

Measure of damages for false or incomplete certificate by notary public. 13 A.L.R.3d 1039.

33-16-2-2. Cause for revocation of appointment — Investigation of violations by secretary of state. — (a) A notary public shall not do any of the following:

- (1) Use any other name or initial in signing acknowledgments, other than that by which the notary has been commissioned.
- (2) Acknowledge any instrument in which the notary's name appears as a party to the transaction.
- (3) Take the acknowledgment of or administer an oath to any person whom the notary actually knows:
 - (A) Has been adjudged mentally incompetent by a court of competent jurisdiction; and
 - (B) To be under a guardianship under IC 29-3 at the time the notary takes the acknowledgment or administers the oath.
- (4) Take the acknowledgment of any person who is blind, without first reading the instrument to the blind person.
- (5) Take the acknowledgment of any person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does speak or understand.
- (6) Acknowledge the execution of:
 - (A) An affidavit, unless the affiant acknowledges the truth of the statements in the affidavit; or
 - (B) An instrument, unless the person who executed the instrument:
 - (i) Signs the instrument before the notary; or
 - (ii) Affirms to the notary that the signature on the instrument is the person's own.

(b) In the event any notary public violates any of the provisions of this article, the notary's appointment may be revoked by the judge of the circuit court in which the notary resides.

(c) The secretary of state may investigate any possible violation of this section by a notary public and may, under IC 4-21.5, revoke the commission of a notary public who violates any of the provisions of this section.

Whenever the secretary of state revokes the commission of a notary public, the notary public is barred from reapplying for a new commission for five (5) years after the revocation. [1 R.S. 1852, ch. 76, § 1a, as added by Acts 1955, ch. 343, § 2; 1977, P.L. 34, § 3; 1981, P.L. 286, § 1; P.L.308-1983, § 1; P.L.302-1985, § 2; P.L.303-1987, § 1; P.L.169-1988, § 4; P.L.3-1989, § 207; P.L.33-1989, § 115.]

Effective Dates. P.L.169-1988, § 13. July 1, 1989.

Cross References. Disqualification as notary, IC 33-16-2-7.

33-16-2-3. Appointment — Governor's discretion. — The governor may appoint notaries public in the several counties whenever, in his judgment, the public interest would be thereby promoted. [1 R.S. 1852, ch. 76, § 2, p. 377; Acts 1855, ch. 73, § 2, p. 145; 1978, P.L. 23, § 3.]

33-16-2-4. Seal required. — No notary shall be authorized to act until he shall have procured such a seal as will stamp upon paper a distinct impression, in words or letters, sufficiently indicating his official character, to which may be added such other device as he may choose and all notarial acts not attested by such seal shall be void. [1 R.S. 1852, ch. 76, § 4, p. 377.]

Indiana Law Journal. The Uniform Traffic Ticket v. Indiana Criminal Procedure: Conflict or Compatability?, 36 Ind. L.J. 99.

Opinions of Attorney General. The use of a rubber stamp which sufficiently indicates

the official character of the notary public, as a seal, satisfies the requirements of this act. 1965, No. 10, p. 44.

NOTES TO DECISIONS

ANALYSIS

Acknowledgments.

Necessity of seal.

Presumption.

Sufficiency of seal.

Verification of pleadings — waiver of seal.

Acknowledgments.

Where a certificate of acknowledgment showed that it was taken in this state, and acknowledged before a person representing himself to be a notary public, and indicating the date of the expiration of his commission and a seal was affixed showing his official character as a notary, it was sufficient to admit the instrument to record as an acknowledged instrument. *Voigt v. Mergenthaler Linotype Co.*, 213 Ind. 325, 12 N.E.2d 498 (1938).

Necessity of Seal.

In giving notice of protest of a note or bill, the notary acts, not officially, but as agent of the holder; and his signature to the notice is sufficient without a seal. *Palmer v. Whitney*, 21 Ind. 58 (1863).

If a notary in another state fails to affix his seal to a certificate, but his official character

is properly authenticated, such failure will not affect his acts. *Pape v. Wright*, 116 Ind. 502, 19 N.E. 459 (1889).

The official acts of a notary must be authenticated by his official seal. *Miller v. State*, 122 Ind. 355, 24 N.E. 156 (1890); *Knox v. Golding*, 46 Ind. App. 634, 91 N.E. 857 (1910).

Presumption.

The presumption arises that a notary acted within his jurisdiction, at least until the contrary was made to appear, in view of this section and IC 33-16-1-1. *Voigt v. Mergenthaler Linotype Co.*, 213 Ind. 325, 12 N.E.2d 498 (1938).

Sufficiency of Seal.

The seal of a notary need not contain the name of the county where he resides or for which he was appointed. *Lange v. State*, 95 Ind. 114 (1884).

One notary may use the seal of another notary without it invalidating his acts. *Muncie Nat'l Bank v. Brown*, 112 Ind. 474, 14 N.E. 358 (1887).

Verification of Pleadings — Waiver of Seal.

Where notary had seal but did not affix it to

Verification of Pleadings — Waiver of Seal. (Cont'd)

verification of petition, and where many parties subsequently waived defect, and notary offered to affix his seal, equity requires that

proceedings should not be dismissed, but that notary be permitted to affix seal. *Brown v. Northern Ind. Land Co.*, 185 Ind. 520, 112 N.E. 525 (1916).

33-16-2-5. Powers. — Every notary has the power to:

- (1) Do all acts which by common law, and the custom of merchants, they are authorized to do;
- (2) Take and certify all acknowledgments of deeds or other instruments of writing required or authorized by law to be acknowledged; and
- (3) Administer oaths generally, and to take and certify affidavits and depositions. [1 R.S. 1852, ch. 76, § 5, p. 377; 1978, P.L. 23, § 4.]

Cross References. Acknowledgment or proof, IC 32-1-2-18.

Adoption proceedings, consent of parents, execution, IC 31-19-9-2.

Jurisdiction, IC 33-16-1-1.

NOTES TO DECISIONS**ANALYSIS**

Acknowledgments.
Affidavits charging crime.
Affidavits in general.
Attorneys at law.
Bastardy proceedings.
Bills and notes.
Collateral attack.
Drainage proceedings.
Foreign affidavits.
Surety of the peace affidavits.
Witnesses.
—Contempt.

Acknowledgments.

Acknowledgments taken by notaries prohibited from acting are void, and the record of an instrument so acknowledged is not constructive notice to anyone. *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N.E. 594 (1898).

Affidavits Charging Crime.

Affidavits filed before justices charging crimes may be sworn to before notaries public. *Hunter v. State*, 102 Ind. 428, 1 N.E. 361 (1885).

Affidavits in General.

Where the jurat and affidavit are combined in the same writing, the signature and seal of the notary apply to the jurat, to the certifying part of the signed writing. *Kleber v. Block*, 17 Ind. 294 (1861).

Where the body of a notary's certificate contains his name describing him as a notary public, it is immaterial whether he appends "notary public" to his name at the end of such certificate. *Indiana Natural Gas & Oil Co. v. Leer*, 34 Ind. App. 61, 72 N.E. 283 (1904).

An "affidavit" of a publisher that he published a certain nonresident notice required his signature before same officer empowered to administer oaths; and the officer's jurat must be attached thereto and his seal affixed. *Deputy v. Dollarhide*, 42 Ind. App. 554, 86 N.E. 344 (1908).

Attorneys at Law.

Attorneys who are notaries may administer oaths to their clients. *Yeagler v. Webb*, 86 Ind. 424 (1882).

Bastardy Proceedings.

Notaries may administer oaths to complainants in bastardy proceedings. *Sample v. State ex rel. Brooks*, 53 Ind. 28 (1876).

Bills and Notes.

In protesting bills or notes, notaries act as agents of the holders of the paper, and their acts need not be attested by their seals. *Palmer v. Whitney*, 21 Ind. 58 (1863).

Collateral Attack.

The authority of a de facto notary public cannot be collaterally questioned. *Spegal v. Krag-Reynolds Co.*, 21 Ind. App. 205, 51 N.E. 959 (1898); *McNulty v. State*, 37 Ind. App. 612, 76 N.E. 547, 117 Am. St. R. 344 (1906).

Drainage Proceedings.

Petitions in drainage proceedings may be sworn to before notaries public. *Updegraff v. Palmer*, 107 Ind. 181, 6 N.E. 353 (1886).

Foreign Affidavits.

Foreign notaries may take depositions to be used in this state whether the laws of their residence authorize them to take depositions

Foreign Affidavits. (Cont'd)

or not. *Midland Steel Co. v. Citizens Nat'l Bank*, 34 Ind. App. 107, 72 N.E. 290 (1904).

When it is shown that, under the laws of other states, notaries have power to take and certify affidavits, their certificates are presumptive evidence in this state. *Andrews v. Ohio & M.R.R.*, 14 Ind. 169 (1860); *Sinclair v. Gunzenhauser*, 179 Ind. 78, 98 N.E. 37 (1912).

Affidavits made before notaries in other states must be authenticated, as required by our statute, to be used as evidence. *Jackson v. State*, 161 Ind. 36, 67 N.E. 690 (1903); *Smith v. Smith*, 185 Ind. 75, 113 N.E. 296 (1916); *Teutonia Loan & Bldg. Co. v. Turrell*, 19 Ind. App. 469, 49 N.E. 852, 65 Am. St. R. 419 (1898); *Midland Steel Co. v. Citizens Nat'l*

Bank, 34 Ind. App. 107, 72 N.E. 290 (1904); *First Nat'l Bank v. Mulford*, 48 Ind. App. 84, 95 N.E. 432 (1911).

Surety of the Peace Affidavits.

An affidavit for surety of the peace could be sworn to before a notary public. *Davis v. State*, 138 Ind. 11, 37 N.E. 397 (1894).

Witnesses.**—Contempt.**

Notaries public cannot punish for contempt a witness who refuses to answer questions in taking his deposition. *Burt v. Pyle*, 89 Ind. 398 (1883).

Collateral References. Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client. 21 A.L.R.3d 483.

Measure of damages for false or incomplete certificate by notary public. 13 A.L.R.3d 1039.

33-16-2-6. Certificate as evidence. — The official certificate of a notary public, attested by his seal, shall be presumptive evidence of the facts therein stated, in cases where, by law, he is authorized to certify such facts. [1 R.S. 1852, ch. 76, § 6, p. 377.]

Cross References. Acknowledgment of deeds and conveyances in foreign countries, IC 32-2-4-1.

Acknowledgment of real property convey-

ances in other states, IC 32-1-2-20.

Certificates of notaries of other states and territories acceptable in evidence, IC 34-37-1-5.

NOTES TO DECISIONS**ANALYSIS**

In general.
Foreign affidavits.
Notice of protest.
Revenue stamps.

In General.

The official certificate of a commissioner appointed by the governor, purporting to be under his hand and seal, attached to a deposition, was presumptive evidence of his official character. *Tedrowe v. Esher*, 56 Ind. 443 (1877).

The certificate of a notary is evidence only of facts that he is required by law to set forth. *Knickerbocker Ice Co. v. Gray*, 165 Ind. 140, 72 N.E. 869, 6 Ann. Cas. 607 (1904).

Where the body of a notary's certificate contained his name describing him as a notary public, it was immaterial whether he appended "notary public" to his name at the end of such certificate. *Indiana Natural Gas & Oil Co. v. Leer*, 34 Ind. App. 61, 72 N.E. 283 (1904).

Foreign Affidavits.

If it is shown that, under the laws of another state, a notary has power to take and certify affidavits, his certificate is presumptive evidence in this state. *Andrews v. Ohio & M.R.R.*, 14 Ind. 169 (1860); *Sinclair v. Gunzenhauser*, 179 Ind. 78, 98 N.E. 37 (1912).

Affidavits taken in a foreign state, in support of a motion for a new trial, would not receive faith and credit in the courts of this state unless authenticated in accordance with the requirements of our statutes. *Jackson v. State*, 161 Ind. 36, 67 N.E. 690 (1903).

Since the common law, which presumably prevailed in a foreign state, did not authorize a notary to administer oaths, it would not be presumed that a notary in such state had such authority. *Smith v. Smith*, 185 Ind. 75, 113 N.E. 296 (1916).

The power to administer oaths was not conferred upon a notary public by common law, but by legislative enactment, and courts of this state could not take judicial notice of legislative enactments of other states confer-

Foreign Affidavits. (Cont'd)

ring such powers. *Teutonia Loan & Bldg. Co. v. Turrell*, 19 Ind. App. 469, 49 N.E. 852, 65 Am. St. R. 419 (1898).

Where a deposition was taken upon notice before a notary public in a foreign state, and the notary certified that the witness was duly sworn; that his testimony was reduced to writing by her; that it was taken at the time and place specified; that the defendant appeared by attorney, and such certificate was signed by the notary, and her seal was attached, a motion to suppress for the reason it did not appear that by the laws of such foreign state a notary public had any authority to take depositions or administer an oath was properly overruled, since it appeared that the notary had complied with our statute which furnished the rules and methods for taking depositions. *Midland Steel Co. v. Citizens*

Nat'l Bank, 34 Ind. App. 107, 72 N.E. 290 (1904).

An affidavit, certified by an officer of a sister state and attached as an exhibit to a complaint for a new trial could not be considered as a part thereof where it was not authenticated as required by statute. *First Nat'l Bank v. Mulford*, 48 Ind. App. 84, 95 N.E. 432 (1911).

Notice of Protest.

The certificate of a notary to a notice of protest is presumptive evidence of the facts therein stated, and is admissible in evidence. *Dickerson v. Turner*, 12 Ind. 223 (1859).

Revenue Stamps.

Failure to attach revenue stamps to notarial certificates does not affect their validity. *Magic Packing Co. v. Stone-Ordean Wells Co.*, 158 Ind. 538, 64 N.E. 11 (1902).

33-16-2-7. Who cannot be a notary public. — No person, being an officer in any corporation or association possessed of any banking powers, shall act as a notary public in the business of such corporation or association. The aforesaid prohibition shall not apply to employees of any such corporation or association. However, a person who is a shareholder or member of a savings association may act as a notary public in the business of such association and an officer and employee of a bank may become and act as a notary public in the business of the bank. No person holding any lucrative office or appointment under the United States or under this state, and prohibited by the Constitution of this state from holding more than one (1) such lucrative office, shall serve as a notary public, and his acceptance of any such office shall vacate his appointment as such notary; but this provision shall not apply to any person holding any lucrative office or appointment under any civil or school city or town of this state. No person, being a public official, or a deputy or appointee acting for or serving under the same, shall make any charge for services as a notary public in connection with any official business of such office, or of any other office in the governmental unit in which such persons are serving, unless such charges are specifically authorized by some statute other than the statute fixing generally the fees and charges of notaries public. [1 R.S. 1852, ch. 76, § 7, p. 377; Acts 1891, ch. 125, § 1, p. 335; 1939, ch. 61, § 1, p. 410; 1959, ch. 42, § 1; P.L.218-1996, § 1; P.L.79-1998, § 101.]

Cross References. Court reporter, power to perform duties of, IC 33-15-24-1.

General assembly members as notaries, IC 2-3-4-1 — IC 2-3-4-4.

Officer of federal land bank association authorized to serve, IC 33-16-5-1.

Prosecuting attorneys given powers of, deputies included, IC 33-14-5-1 — IC 33-14-5-4.

Public defender given powers of, IC 33-1-7-3.

Qualifications, IC 33-16-2-1.

Opinions of Attorney General. This act

prohibits officers from being commissioned as notaries, but does not prohibit or affect powers given to officers by virtue of their office. 1951, No. 27, p. 70.

A member of the county board of public welfare is an officer prohibited by the constitution from holding more than one lucrative office, which expressly prohibits him from serving as a notary public and that office was vacated by his acceptance of the office of member of the county board of public welfare. 1957, No. 12, p. 54.

NOTES TO DECISIONS

ANALYSIS

Collateral attack.
 Effect of disqualification.
 Fees of deputy county auditor.
 Minors.
 Town judge.
 Vacation of appointment.

Collateral Attack.

The authority of a de facto notary public cannot be collaterally questioned. *Spegal v. Krag-Reynolds Co.*, 21 Ind. App. 205, 51 N.E. 959 (1898); *McNulty v. State*, 37 Ind. App. 612, 76 N.E. 547, 117 Am. St. R. 344 (1906).

Effect of Disqualification.

Acknowledgments taken before notaries disqualified to act are void, and the record of instruments so acknowledged is not constructive notice. *Sinclair v. Gunzenhauser*, 179 Ind. 78, 98 N.E. 37 (1912); *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N.E. 594 (1898); *Bledsoe v. Ross*, 59 Ind. App. 609, 109 N.E. 53 (1915); *Starz v. Hirsch*, 78 Ind. App. 431, 136 N.E. 36 (1922).

Fees of Deputy County Auditor.

If a deputy county auditor, who acts as a

notary public, performs duties that such auditor is authorized by law to perform, and collects the fees fixed by law for the performance of such service, the fees so collected must be paid into the county treasury and cannot be retained by such deputy. *Sharp v. State ex rel. Board of County Comm'rs*, 54 Ind. App. 182, 99 N.E. 1072 (1912).

Minors.

Minors are not ineligible to the office of notary public under the constitution or statutes of the state of Indiana, nor are they ineligible at common law. *United States v. Bixby*, 9 F. 78 (D. Ind. 1881).

Town Judge.

A person serving as town judge does not thereby vacate his position as a notary public. *Moore v. Harvey*, 77 Ind. Dec. 31, 406 N.E.2d 354 (Ind. App. 1980).

Vacation of Appointment.

Appointment of a notary as a deputy officer, vacates his office as notary. *McNulty v. State*, 37 Ind. App. 612, 76 N.E. 547, 117 Am. St. R. 344 (1906); *Sharp v. State ex rel. Board of County Comm'rs*, 54 Ind. App. 182, 99 N.E. 1072 (1912).

33-16-2-8. List of commissioned notaries — Change of name or address. — The secretary of state shall furnish to the clerk of the circuit court of a county, at his request, a list of all commissioned notaries public residing in that county. If any notary public shall change his name or county of residence during the term of his commission he shall notify the secretary of state in writing of the change. The secretary of state shall process a revised commission to reflect any change of name or county and such revised commission shall only be valid for the unexpired term of the original commission. [IC 33-16-2-8, as added by Acts 1977, P.L. 34, § 4; 1978, P.L. 23, § 5.]

33-16-2-9. Form of notarization. — (a) Each notary, in addition to affixing his name, expiration date, and seal, shall print or type his name immediately beneath his signature on a certificate of acknowledgment, jurat, or other official document, unless his name appears:

(1) In printed form on the document; or

(2) As part of his stamp in such form as to be legible when the document is photocopied;

and also shall indicate his county of residence on the document.

(b) Failure to comply with subsection (a) does not affect the validity of any document notarized before July 1, 1982. [IC 33-16-2-9, as added by Acts 1978, P.L. 23, § 6.]

CHAPTER 3

REQUIREMENT OF APPENDING DATE OF EXPIRATION
OF COMMISSION

SECTION.

33-16-3-1. Certificate — Date of commission.

33-16-3-2. Penalty for failing to append statement.

33-16-3-1. Certificate — Date of commission. — It shall be the duty of every notary public holding a commission as such from the state of Indiana, at the time of signing any certificate of acknowledgment of a deed, mortgage or other instrument, or any jurat or other official document, to append to such certificate a true statement of the date of the expiration of his commission as such notary public. [Acts 1899, ch. 58, § 1, p. 79.]

Opinions of Attorney General. A township trustee is not required by statute to put the expiration date of his term on an act he performs that a notary may perform in Indi-

ana, but a trustee may voluntarily add the date upon which his current term of office is expected to end. 1990, No. 90-10, p. —.

33-16-3-2. Penalty for failing to append statement. — A notary public who omits to make the statement required by section 1 [IC 33-16-3-1] of this chapter commits a Class C infraction. [Acts 1899, ch. 58, § 2, p. 79; 1978, P.L. 2, § 3307.]

Cross References. Infraction and ordinance violation enforcement proceedings, IC 34-28-5.

CHAPTER 4

ADMINISTERING OATHS, TAKING ACKNOWLEDGMENTS

SECTION.

33-16-4-1. Administration of oaths and taking of acknowledgments.

33-16-4-2. Fraud in administering oaths or taking acknowledgments — Penalty.

SECTION.

33-16-4-3. Use of fraudulently prepared oath or acknowledgment — Penalty.

33-16-4-1. Administration of oaths and taking of acknowledgments. — (a) The following are authorized to administer oaths and take acknowledgments generally, pertaining to all matters where an oath is required:

- (1) Notaries public.
- (2) Justices and judges of courts, in their respective jurisdictions.
- (3) The secretary of state of Indiana.
- (4) Mayors, clerks, and clerk-treasurers of towns and cities, in their respective towns and cities.
- (5) Clerks of circuit courts and master commissioners, in their respective counties.
- (6) Judges of United States district courts of Indiana, in their respective jurisdictions.

(7) United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions.

(8) A precinct election officer (as defined in IC 3-5-2-40.1) and an absentee voter board member appointed under IC 3-11-10, for any purpose authorized under IC 3.

(9) A member of the Indiana election commission, a co-director of the election division, or an employee of the election division under IC 3-6-4.2.

(10) County auditors, in their respective counties.

(b) Any member of the general assembly shall have full power and authority to subscribe and administer oaths and take acknowledgments of all documents whatsoever anywhere in Indiana. [Acts 1861, ch. 76, § 1, p. 147; 1957, ch. 250, § 1; P.L.178-1988, § 1; P.L.1-1989, § 64; P.L.3-1995, § 151; P.L.3-1997, § 448.]

Effective Dates. P.L.3-1997, § 487, declared an emergency and § 448 provided that the amendment take effect retroactively to January 1, 1997.

Cross References. Circuit courts administering oaths, IC 33-4-2-8.

Clerks of courts administering oaths, IC 33-17-1-4.

Court reporters, IC 33-15-24-1.

Notaries public administering oaths, IC 33-16-2-5.

Prosecuting attorneys administering oaths, IC 33-14-5-1.

Sheriff of county administering oaths, IC 34-49-1-3, IC 34-55-4-7.

Supreme Court administering oaths, IC 33-2-1-4.

NOTES TO DECISIONS

ANALYSIS

In general.
County auditors.
Court officers.
Deputies.
Notaries public.

In General.

Belief of a person as to the truth of a statement is equivalent to an absolute affirmation of its truth. *Champ v. Kendrick*, 130 Ind. 549, 30 N.E. 787 (1892); *Deering Harvester Co. v. Peugh*, 17 Ind. App. 400, 45 N.E. 808 (1897).

County Auditors.

County auditors may administer the oaths required to the statements filed in proceedings to contest an election. *Wheat v. Ragsdale*, 27 Ind. 191 (1866); *Curry v. Miller*, 42 Ind. 320 (1873).

Court Officers.

Oaths administered by an officer before a court are considered as being administered by the court. *Masterson v. State*, 144 Ind. 240, 43 N.E. 138 (1896).

Deputies.

An indictment or information for perjury

did not need to expressly allege authority in the officer who administered the oath to defendant to administer the same, where the facts alleged showed that he had such authority. *Masterson v. State*, 144 Ind. 240, 43 N.E. 138 (1896).

The jurat is merely a certificate of the due administration of the oath. Its purpose is to evidence the fact that the affidavit was duly sworn to before an officer authorized to administer it. Therefore, jurat signed by deputy circuit court clerk on behalf of said clerk himself, when such deputy was authorized to do so, was sufficient. *Craig v. State*, 232 Ind. 293, 112 N.E.2d 296 (1953).

Notaries Public.

A complaint for bastardy may be sworn to before a notary public. *Sample v. State ex rel. Brooks*, 53 Ind. 28 (1876).

Affidavits filed before justices of the peace charging crimes may be sworn to before a notary public. *Hunter v. State*, 102 Ind. 428, 1 N.E. 361 (1885).

Notaries public may administer the oath required to petitions in drainage proceedings. *Updegraff v. Palmer*, 107 Ind. 181, 6 N.E. 353 (1886).

An affidavit for surety of the peace could be sworn to before a notary public. *Davis v. State*, 138 Ind. 11, 37 N.E. 397 (1894).

Collateral References. 58 Am. Jur. 2d
Notaries Public, §§ 33-37.

33-16-4-2. Fraud in administering oaths or taking acknowledgments — Penalty. — A person authorized to administer oaths or take acknowledgments who, with intent to defraud:

- (1) Affixes his signature to a blank form of affidavit or certificate of acknowledgment; and
- (2) Delivers that form to another person, with intent that it be used as an affidavit or acknowledgment;

commits a Class D felony. [IC 33-16-4-2, as added by Acts 1977, P.L. 26, § 13.]

Cross References. Penalties for felonies,
IC 35-50-1, IC 35-50-2, IC 35-50-5-2.

33-16-4-3. Use of fraudulently prepared oath or acknowledgment — Penalty. — A person who knowingly uses a form that was delivered to him in violation of section 2 [IC 33-16-4-2] of this chapter commits a Class D felony. [IC 33-16-4-3, as added by Acts 1977, P.L. 26, § 14.]

Cross References. Penalties for felonies,
IC 35-50-1, IC 35-50-2, IC 35-50-5-2.

CHAPTER 5

ACKNOWLEDGMENT BY FEDERAL BANK ASSOCIATION OFFICERS AND EMPLOYEES

SECTION.

33-16-5-1. Eligibility of manager, officers,
and employees of federal land
bank associations to act as no-
taries.

33-16-5-1. Eligibility of manager, officers, and employees of federal land bank associations to act as notaries. — The manager, officers, and employees of any federal land bank association located within the state of Indiana may become and act as a notary public in the business of such association to take acknowledgments of deeds and real estate mortgages and to take and certify affidavits. [Acts 1967, ch. 83, § 1; 1982, P.L. 197, § 1.]

CHAPTER 6

ACKNOWLEDGMENT BY MEMBER OF CEMETERY ASSOCIATION OF LOT SALES

SECTION.

33-16-6-1. Cemetery lots.

33-16-6-1. Cemetery lots. — Any notary public who may be a stockholder or officer of any cemetery association in which no officer or stockholder in such association can be a beneficiary from the sale of lots or

otherwise, as provided by the constitution of such association, may and is hereby authorized to take acknowledgments of sales of such lots. [Acts 1927, ch. 134, § 1, p. 423.]

CHAPTER 7

FEES

SECTION.

33-16-7-1. Maximum fees.

33-16-7-1. Maximum fees. — The maximum fee of a notary public is two dollars (\$2) for each notarial act. [Acts 1919, ch. 19, § 1, p. 51; 1977, P.L. 34, § 5; P.L.287-1989, § 1.]

CHAPTER 8

TOWNSHIP TRUSTEES; AUTHORITY TO PERFORM NOTARIAL ACTS

SECTION.

33-16-8-1. Power to perform notarial acts.

33-16-8-2. Trustee to obtain seal — Unattested act void.

33-16-8-3. Signature to include date of election.

SECTION.

33-16-8-4. Fee prohibited.

33-16-8-5. Restriction on permitted acts.

33-16-8-1. Power to perform notarial acts. — A township trustee has the power to perform any act that a notary public may perform in Indiana. Acknowledgments to deeds or other instruments taken by a trustee shall be recorded as if they had been acknowledged before a notary public. [P.L.304-1987, § 1.]

Opinions of Attorney General. A township trustee is not required by statute to put the expiration date of his term on an act he performs that a notary may perform in Indi-

ana, but a trustee may voluntarily add the date upon which his current term of office is expected to end. 1990, No. 90-10, p. —.

33-16-8-2. Trustee to obtain seal — Unattested act void. — Before a trustee may perform a notarial act, the trustee shall obtain a seal that can stamp upon paper a distinct impression that indicates the trustee’s official character, along with any other information that the trustee chooses. A notarial act of a trustee that is not attested by a seal is void. [P.L.304-1987, § 1.]

33-16-8-3. Signature to include date of election. — When signing any certificate of acknowledgment, jurat, or other official document, the trustee must append to it the trustee’s date of election as a trustee. [P.L.304-1987, § 1.]

33-16-8-4. Fee prohibited. — A trustee may not receive a fee for performing a notarial act. [P.L.304-1987, § 1.]

33-16-8-5. Restriction on permitted acts. — A trustee shall not perform any act that is prohibited to a notary public. [P.L.304-1987, § 1.]

ARTICLE 17

CIRCUIT COURT CLERKS AND COURT FEES

CHAPTER.

1. POWERS AND DUTIES OF THE CLERK GENERALLY, 33-17-1-1 — 33-17-1-11.
2. RECORDKEEPING DUTIES, 33-17-2-1 — 33-17-2-11.

CHAPTER.

- 3-13. [REPEALED.]
14. LICENSE FEES, 33-17-14-1 — 33-17-14-4.

CHAPTER 1

POWERS AND DUTIES OF THE CLERK GENERALLY

SECTION.

- 33-17-1-1. "Clerk" defined.
- 33-17-1-2. Election and term.
- 33-17-1-3. Bond.
- 33-17-1-4. Receipt of funds — Liability — ISETS.
- 33-17-1-5. Office location and hours.
- 33-17-1-6. Table of fees to be posted.
- 33-17-1-7. Administration of oaths.

SECTION.

- 33-17-1-8. Election duties.
- 33-17-1-9. Purchase of judgment, decree or court allowance prohibited.
- 33-17-1-10. [Repealed.]
- 33-17-1-11. Procedure for filing petition for issuance of protective order without assistance of attorney.

SECTION.

33-17-1-1. "Clerk" defined. — As used in this article, "clerk" means a clerk of the circuit court elected and qualified under Article 6, sections 2 and 4 of the Constitution of the State of Indiana. In a county having one (1) or more superior courts or a county, municipal, or probate court, the clerk shall serve as clerk of the superior, county, municipal, and probate court as well as clerk of the circuit court. [P.L.171-1984, § 1; P.L.192-1986, § 30.]

NOTES TO DECISIONS

"County Clerk."

The office of "county clerk" is unknown to the constitution and laws of this state. Taylor v. State ex rel. Ogle, 168 Ind. 294, 80 N.E. 849 (1907).

It is incorrect to refer to clerks of circuit courts as "county clerks." Bolds v. Woods, 9 Ind. App. 657, 36 N.E. 933 (1894).

33-17-1-2. Election and term. — A clerk of the circuit court shall be elected under IC 3-10-2-13 by the voters of each county. The term of office of a clerk is four (4) years, continuing until a successor is elected and qualified. [P.L.171-1984, § 1; P.L.5-1986, § 31.]

NOTES TO DECISIONS

Term of Office.

All clerks of the circuit court who are elected, whether to fill vacancies or otherwise,

hold their offices for four years. Governor v. Nelson, 6 Ind. 496 (1855).

33-17-1-3. Bond. — In the manner prescribed by IC 5-4-1, the clerk of each county shall execute a bond conditioned upon:

- (1) The faithful discharge of the duties of his office; and
- (2) The proper payment of all money that may come into his hands as clerk. [P.L.171-1984, § 1.]

NOTES TO DECISIONS

ANALYSIS

In general.
Demand.

In General.

Sureties on the bonds of clerks of the circuit courts were only liable for money received by them when they were authorized by law to receive the same. *Jenkins v. Lemonds*, 29 Ind. 294 (1868); *State ex rel. Arnold v. Givan*, 45 Ind. 267 (1873); *Scott v. State ex rel. Roberts*, 46 Ind. 203 (1874).

The sureties of such clerks are liable for all moneys received by them in the discharge of their official duties. *Jewett v. State ex rel. Harrod*, 94 Ind. 549 (1884); *Henry v. State ex rel. Franklin*, 98 Ind. 381 (1884); *State ex rel. Hall v. McGill*, 12 Ind. App. 665, 40 N.E. 1115, 15 Ind. App. 289 (1895).

The sureties on the bonds of such clerks are liable for trust funds paid to them under an order of the court. *Sullivan v. State ex rel. Langsdale*, 121 Ind. 342, 23 N.E. 150 (1889).

Execution, failure to make proper indorsement as to sureties, liability of clerk. *State ex rel. Wall v. Fleming*, 124 Ind. 97, 24 N.E. 664 (1890).

The law gave to a bona fide purchaser of real estate, against which a judgment lien existed, but which the clerk failed to enter on the judgment docket, a right of action against such clerk for the amount of damages sustained by reason of such neglect. *Johnson v. Schloesser*, 146 Ind. 509, 45 N.E. 702, 36 L.R.A. 59, 59 Am. St. R. 367 (1896).

The penalty imposed upon an officer by statute for failure to report or pay over fees collected was in the nature of a punishment of the officer, and could not be recovered by the state in an action on an official bond conditioned that such officer should faithfully dis-

charge his duties and pay over all moneys coming into his hands as such officer. *State v. Flynn*, 157 Ind. 52, 60 N.E. 684 (1901).

The clerk and his sureties were liable for damages in the improper issuance of letters of guardianship. *State ex rel. Cecil v. Christian*, 13 Ind. App. 308, 41 N.E. 603 (1895).

A complaint in an action to recover from the clerk of the court and the sureties on his official bond the amount paid by the state, as fees and charges, to the attorney general did not need to expressly aver that the money was withheld by the clerk for twelve months before its collection by the attorney general, as such fact would be presumed. *Leavell v. State ex rel. Marsh*, 16 Ind. App. 72, 44 N.E. 687 (1896).

If allowances are unlawfully made and paid to clerks out of the county treasury, the county may recover the same. *Comer v. Board of County Comm'rs*, 32 Ind. App. 477, 70 N.E. 179 (1904).

Clerks cannot recover from the county money paid for service of a janitor for their offices. *Board of County Comm'rs v. Bline*, 34 Ind. App. 352, 72 N.E. 1034 (1905).

Demand.

When a demand was necessary before a clerk was required to pay over money, the statute of limitations did not run until after a demand. *Lynch v. Jennings*, 43 Ind. 276 (1873).

If the law fixes the time of payment, no demand is necessary, and the statute runs from the time payment should be made. *Moore v. State ex rel. Denny*, 55 Ind. 360 (1876).

Demand must be made before the action is barred by the statute of limitations. *Landers v. Fisher*, 2 Ind. App. 64, 28 N.E. 204 (1891).

33-17-1-4. Receipt of funds — Liability — ISETS. — (a) As used in this section, "Indiana support enforcement tracking system (ISETS)" refers to the statewide automated system for the collection, disbursement, and distribution of child support payments established by the division of family and children.

(b) The clerk may receive funds:

- (1) in payment of judgments; and
- (2) ordered to be paid into the court by the judge.

(c) Except as provided in subsection (d), the clerk is liable, with his sureties, on his official bond for all funds received to any person who is entitled to demand and receive those funds from him.

(d) The clerk is not personally liable or liable in the clerk's official capacity on the clerk's official bond for funds received if the clerk:

(1) through error or in accordance with the best information available to the clerk, disbursed the funds to a person the clerk reasonably believed to be entitled to receive the funds and to comply with a:

(A) child support order; or

(B) garnishment order;

(2) inappropriately disbursed or misapplied child support funds, arising without the knowledge or approval of the clerk, that resulted from:

(A) an action by an employee of, or a consultant to, the division of family and children;

(B) an ISETS technological error; or

(C) information generated by ISETS.

(3) disbursed funds that the clerk reasonably believed were available for disbursement but that were not actually available for disbursement;

(4) disbursed child support funds paid to the clerk by a personal check that was later dishonored by a financial institution; and

(5) did not commit a criminal offense as a part of the disbursement.

(e) If the clerk improperly disburses funds in the manner described by subsection (d), the clerk shall do the following:

(1) Deduct an amount equal to the amount of funds improperly disbursed from fees collected under IC 33-19-6-5.

(2) Credit each account from which funds were improperly disbursed with the amount of funds improperly disbursed under subsection (d).

(3) Notify the prosecuting attorney of the county of:

(A) the amount of the improper disbursement;

(B) the person from whom the amount of the improper disbursement should be collected; and

(C) any other information to assist the prosecuting attorney to collect the amount of the improper disbursement.

(4) Record each action taken under this subsection on a form prescribed by the state board of accounts.

(f) If:

(1) fees collected under IC 33-19-6-5 are credited to an account under subsection (e)(2) because a check or money order was dishonored by a financial institution or was the subject of a stop payment order; and

(2) a person subsequently pays to the clerk all or part of the amount of the check or money order that was dishonored or the subject of a stop payment order;

the clerk shall reimburse the account containing fees collected under IC 33-19-6-5 using the amount the person paid to the clerk. [P.L.171-1984, § 1; P.L.6-1991, § 2; P.L.284-1995, § 1; P.L.33-1998, § 6.]

NOTES TO DECISIONS

ANALYSIS

In general.

Decedents' estates.

Former law.

Judgments for costs.

Liability of sureties.

Payment to successors.

Personal liability.

Redemption money from execution sales.

Statute of limitations.

In General.

Such clerks and their sureties are liable for any money or its equivalent that may be paid to such clerks in their official capacities by order of the court. *Jewett v. State ex rel. Harrod*, 94 Ind. 549 (1884).

Where state obtained judgment for less than amount sought, against the clerk of the circuit court and the surety on his bond, the state was not precluded from appealing from such judgment by the fact that the succeeding clerk received the amount of the money adjudged to be due the state under the judgment, since he was merely acting in the discharge of a duty imposed upon him by law. *State ex rel. Jackson v. Middleton*, 215 Ind. 219, 19 N.E.2d 470 (1939).

Decedents' Estates.

Clerks are authorized by former IC 33-15-14-1 to receive moneys for claimants or distributees on the settlement of estates. *Swift v. State ex rel. Clark*, 63 Ind. 81 (1878); *Henry v. State ex rel. Franklin*, 98 Ind. 381 (1884).

Former Law.

Prior to the enactment of former IC 33-15-14-1, clerks of circuit courts had no authority to receive money on judgments. *Hays v. Boyer*, 59 Ind. 341 (1877); *Hillegass v. Bender*, 78 Ind. 225 (1881).

Judgments for Costs.

Such clerks are authorized to collect judgments for costs. *Hammann v. Mink*, 99 Ind. 279 (1884).

If a clerk of a circuit court receives money on a judgment, he cannot apply the same on a judgment for costs against the person for whom the money was received. *May v. State ex rel. Rife*, 162 Ind. 127, 69 N.E. 999 (1904).

Liability of Sureties.

Where the receipt of money from the ad-

ministrator of an estate was not part of the duties of the clerk of court, the clerk's surety is not liable therefor. *Bowers v. Fleming*, 67 Ind. 541 (1879).

Payment to Successors.

It is the duty of clerks of circuit courts, on going out of office, to pay over all moneys belonging to the office to their successors. *Board of County Comm'rs v. McFadden*, 88 Ind. 333 (1882).

Personal Liability.

Where the receipt of money by the clerk of court was not part of his official duties the clerk may be personally liable. *Hunt v. Milligan*, 57 Ind. 141 (1877); *Bowers v. Fleming*, 67 Ind. 541 (1879).

Redemption Money from Execution Sales.

Money paid to the clerk of a court in order to redeem land sold at tax sale, after the expiration of the time allowed by the court for the payment of the judgment, was received, not by virtue of his office, but by color of his office, and could not be recovered in an action on the bond of the clerk, in the absence of a showing that a demand was made therefor previous to bringing the action. *State ex rel. Hall v. McGill*, 12 Ind. App. 665, 40 N.E. 1115 (1895).

Statute of Limitations.

In a suit against a clerk to recover funds which he failed to account for and pay over, he could avail himself of the statute of limitations as a defense and an answer by him averring that the right of action therefor occurred more than six years prior to commencement of such action, was sufficient. *Moore v. State ex rel. Denny*, 55 Ind. 360 (1876).

Where money was received by a clerk in payment of a judgment, a statement in a receipt therefor to the judgment defendant that the money was to be applied on the judgment, did not amount to a contract, in writing, to pay the money to the judgment plaintiffs, and an action against the clerk for the money received was not thereby taken out of the operation of the statute limiting such actions to six years. *Landers v. Fisher*, 2 Ind. App. 64, 28 N.E. 204 (1891).

33-17-1-5. Office location and hours. — (a) The board of county commissioners shall provide the clerk with an office at the county seat in a building provided for that purpose.

(b) The clerk shall keep the office open on every day of the year except on Sundays and legal holidays. However, the clerk:

- (1) Shall keep his office open on those days and at those times that are necessary for the proper administration of the election statutes; and
- (2) May close the office on those days that the judge of the circuit court orders the court closed in accordance with the custom and practice of the county.

(c) Any legal action required to be taken in the office of the clerk during the time the office is closed under this section may be taken on the next following day the office is open. [P.L.171-1984, § 1.]

33-17-1-6. Table of fees to be posted. — A clerk shall post in a conspicuous place in his office a table of his fees. If he fails to post a table of fees, a clerk is not entitled to demand or receive fees for services that he renders. [P.L.171-1984, § 1.]

33-17-1-7. Administration of oaths. — A clerk may administer all oaths. [P.L.171-1984, § 1.]

Cross References. Authority to administer oaths, IC 33-16-4-1.

Opinions of Attorney General. A deputy clerk of a circuit court in the state of Indiana is a public official authorized to administer an

oath either in the name of his principal or in his own name as such deputy; however, it is the better practice for the deputy to act in the name of his principal. 1952, No. 4, p. 13.

NOTES TO DECISIONS

Deputy Clerk.

It was not necessary that the state prove as true that an oath was administered by a deputy clerk, in writing, that he was duly appointed in writing, that he was duly sworn, that his oath of office was duly entered on the clerk's commission; to establish the authority to administer the oath to appellant, it was merely necessary to prove that he was acting as and performing the duties of deputy clerk. *Masterson v. State*, 144 Ind. 240, 43 N.E. 138 (1896).

The jurat is merely a certificate of the due administration of the oath. Its purpose is to evidence the fact that the affidavit was duly sworn to before an officer authorized to administer it. Therefore, jurat signed by deputy circuit court clerk on behalf of said clerk himself, when such deputy was authorized to do so, was sufficient. *Craig v. State*, 232 Ind. 293, 112 N.E.2d 296 (1953).

33-17-1-8. Election duties. — A clerk shall carry out the duties prescribed for him in IC 3 concerning elections. [P.L.171-1984, § 1.]

33-17-1-9. Purchase of judgment, decree or court allowance prohibited. — The clerk may not become the purchaser of any judgment, decree, or allowance of any court of which he is an officer, and all such purchases are void as to the purchaser. [P.L.171-1984, § 1.]

33-17-1-10. [Repealed.]

Compiler's Notes. This section, concerning payment for the clerk or his deputy attending court for change of venue, was re-

pealed by P.L.305-1987, § 38. For present provisions concerning collection of a fee in change of venue cases, see IC 33-19-4-3.

33-17-1-11. Procedure for filing petition for issuance of protective order without assistance of attorney. — (a) The clerk shall provide each person filing a petition for the issuance of a protective order under IC 34-26-2 without the assistance of an attorney the following information:

- (1) The procedure for obtaining a protective order.
- (2) When a protective order becomes effective.
- (3) Procedures to follow when a protective order is violated.

(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.

(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a). [P.L.31-1996, § 15; P.L.32-1996, § 15; P.L.1-1998, § 189.]

Res Gestae. Legislative update, 40 (No. 4)
Res Gestae 36 (1996).

CHAPTER 2

RECORDKEEPING DUTIES

SECTION.

- 33-17-2-1. Duties generally.
- 33-17-2-2. Appropriations for books and stationery.
- 33-17-2-3. Maintenance of judgment docket.
- 33-17-2-4. Public access to judgment docket.
- 33-17-2-5. Entry of judgment or recognizance — Release of judgment.

SECTION.

- 33-17-2-6. Execution docket.
- 33-17-2-7. [Repealed].
- 33-17-2-8. Monthly report.
- 33-17-2-9. Register of court fees.
- 33-17-2-10. [Repealed.]
- 33-17-2-11. Delivery of records, books and papers to successor.

33-17-2-1. Duties generally. — (a) The clerk shall endorse, on each writing required to be filed in his office, the time when it was filed.

(b) The clerk shall carefully preserve in his office all records and writings pertaining to his official duties.

(c) The clerk shall procure, at the expense of the county, all necessary judges' appearance, bar, judgment, and execution dockets, order-books, and final record books.

(d) The clerk shall attend, in person or by deputy, the circuit court of the county, and enter in proper record books all orders, judgments, and decrees of that court.

(e) Within fifteen (15) days after the cases are finally determined, the clerk shall enter in final record books a complete record of:

- (1) All cases involving the title to land;
- (2) All criminal cases in which the punishment is death or imprisonment, except where a nolle prosequi is entered or an acquittal is had; and
- (3) All other cases, at the request of either party and upon payment of the costs. [P.L.171-1984, § 1.]

NOTES TO DECISIONS

ANALYSIS

In general.
Federal civil rights action.
—Immunity from liability.

In General.

Clerks in making entries of the proceedings of courts should not state the reasons for the action of the court. *Hasselback v. Sinton*, 17 Ind. 545 (1861).

Courts take judicial notice of the signatures of their clerks. *Buell v. State*, 72 Ind. 523 (1880); *Hipes v. State*, 73 Ind. 39 (1880).

All records made by the clerk of the court when they pertain to the court's business,

whether ministerial or otherwise, must necessarily be under the supervision and control of the court. *Bedron v. Baran*, 90 Ind. App. 655, 169 N.E. 695 (1930).

Federal Civil Rights Action.**—Immunity From Liability.**

A clerk's involvement in the alleged concealment of the entry of an order granting the defendant a new trial was not subject to quasi-judicial immunity in a federal civil rights action, although the clerk was allowed to try to establish that "extraordinary circumstances" excused his conduct. *Lowe v. Letsinger*, 772 F.2d 308 (7th Cir. 1985).

33-17-2-2. Appropriations for books and stationery. — The county council shall appropriate reasonable sums to the clerk for necessary blank books and stationery. [P.L.171-1984, § 1.]

33-17-2-3. Maintenance of judgment docket. — (a) The clerk shall keep a circuit court judgment docket.

(b) Upon the filing in his office of a statement or transcript of any judgment for the recovery of money or costs, the clerk shall enter, and index in alphabetical order, in this judgment docket a statement of the judgment showing the following:

- (1) The names of all the parties.
- (2) The name of the court.
- (3) The number of the cause.
- (4) The book and page of the record in which the judgment is recorded.
- (5) The date the judgment is entered and indexed.
- (6) The date of the rendition of judgment.
- (7) The amount of the judgment and the amount of costs.

(c) If a judgment is against several persons, the statement required to be entered under subsection (b) shall be repeated under the name of each judgment debtor in alphabetical order.

(d) A person interested in any judgment for money or costs that has been rendered by any Indiana state court, or by any federal court of general original jurisdiction sitting in Indiana, may have the judgment entered upon the circuit court judgment docket by filing with the clerk:

- (1) A statement setting forth the facts required under subsection (b); or
- (2) A transcript of the judgment;

certified under the hand and seal of the court that rendered the judgment. [P.L.171-1984, § 1.]

Cited: *Boyer v. Conte* (In re Case No. 83-10377 Import & Mini Car Parts, Ltd.), 200 Bankr. 857 (Bankr. N.D. Ind. 1996).

NOTES TO DECISIONS

ANALYSIS

Clerk responsibility.
Federal judgments.
Transcript of judgment.

Clerk Responsibility.

Under Indiana law, the clerk is given the exclusive statutory duty to maintain the judgment docket; therefore as the clerk is responsible for errors appearing in the judgment docket, the litigants have no duty to correct those errors. *Henson v. CSC Credit Servs.*, 29 F.3d 280 (7th Cir. 1994).

Federal Judgments.

Judgment of a federal court is admissible in evidence in state court under former IC 34-1-17-3 (repealed; for present similar provisions, see IC 34-39-4-3), and may be entered on the circuit court judgment docket under subsection (d) of this section which can be enforced pursuant to the grant of powers to state

courts under Rule, TR 69. *Miller v. Conte* (In re Import & Mini Car Parts, Ltd., Inc.), 203 Bankr. 124 (N.D. Ind. 1996), aff'd, 97 F.3d 1454 (7th Cir. 1996).

A state court cannot enforce proceedings supplemental on a federal judgment without first domesticating the judgment. *Borgman v. Aikens*, 681 N.E.2d 213 (Ind. App. 1997).

Transcript of Judgment.

In condemnation proceeding where landowner withdrew the amount deposited by the state and furnished bond as provided in IC 32-11-1-8 and the bond was entered on the judgment docket in accordance with that section, the bond constituted a lien on all the landowner's real estate and it was not necessary to obtain a transcript of the judgment from the clerk and make a separate filing of the judgment under former IC 34-1-43-1 (repealed). *State v. Cox*, 177 Ind. App. 47, 377 N.E.2d 1389, 63 Ind. Dec. 214 (1978).

33-17-2-4. Public access to judgment docket. — The circuit court judgment docket is a public record that is open during the usual hours of transacting business to the examination of any person desiring it. [P.L.171-1984, § 1.]

33-17-2-5. Entry of judgment or recognizance — Release of judgment. — A clerk shall:

- (1) Enter a judgment or recognizance within fifteen (15) days after its rendition; or
- (2) Cause a release of judgment to be entered on the judgment docket within fifteen (15) days after satisfaction of the judgment. [P.L.171-1984, § 1; P.L.167-1984, § 76; P.L.355-1989(ss), § 10.]

33-17-2-6. Execution docket. — (a) The clerk shall keep an execution docket.

(b) The clerk shall enter all executions on the execution docket as they are issued by him, specifying in proper columns the following information:

- (1) The names of the parties.
- (2) The amount of the judgment and the interest due upon the issuing of the execution.
- (3) The costs.

The clerk shall also prepare an additional column in which he shall enter at length the return of the sheriff.

(c) The execution docket entries may be inspected and copied under IC 5-14-3-3. [P.L.171-1984, § 1; P.L.4-1994, § 12.]

33-17-2-7. [Repealed]

Compiler's Notes. This section, concerning the official bond index record, was repealed by P.L.4-1994, § 24, effective July 1, 1994.

33-17-2-8. Monthly report. — (a) Before the twenty-fifth day of each month, the clerk shall prepare a report showing as of the close of business on the last day of the preceding month the following information:

- (1) The balance, if any, of fees payable to the county.
- (2) Fees collected for fish and game licenses.
- (3) Trust funds held, including payments collected for support.
- (4) The total of the balances of all fees and funds.
- (5) The record balance of money in each depository at the end of the month.
- (6) The cash in the office at the close of the last day of the month.
- (7) Any other items for which the clerk of the circuit court is entitled to credit.
- (8) The total amount of cash in each depository at the close of business on the last day of the month.
- (9) The total of checks issued against each depository that are outstanding at the end of the month and unpaid by the depositories.

(b) The clerk shall:

- (1) Retain one (1) copy as a public record of the clerk's office; and
- (2) File three (3) copies with the county auditor, who shall:
 - (A) Present one (1) copy to the board of commissioners of the county at its next regular meeting; and
 - (B) Transmit one (1) copy to the state board of accounts.

Each copy of the report shall be verified by the certification of the clerk. The clerk shall file the original with the county auditor, who shall file it with the records of the county board of finance.

(c) The state board of accounts shall prescribe forms for the clerk's monthly reports. [P.L.171-1984, § 1; P.L.355-1989(ss), § 11.]

33-17-2-9. Register of court fees. — (a) The clerk shall keep a register of witness fees and other court fees.

(b) As soon as he receives money in payment of court fees or fees for a witness or any other person, the clerk shall make an entry into the register recording the receipt of the payment.

(c) The register must contain the following information:

- (1) The names, in alphabetical order, of persons for whom payment has been received.
- (2) The cause for which the fee is paid.
- (3) In which fee book and on which page the fee is taxed.
- (4) The amount paid.
- (5) When the fee was paid in and when it was paid out.

(d) The register must be open for inspection at all times in a conspicuous place in his office. [P.L.171-1984, § 1.]

NOTES TO DECISIONS

In General.

Clerks may be made criminally liable for failing to pay over moneys as required by law. *State v. Record*, 56 Ind. 107 (1877).

A complaint in an action to recover from the clerk of the court and the sureties on his official bond the amount paid by the state, as

fees and charges, to the attorney general, did not need to expressly aver that the money was withheld by the clerk for twelve months before its collection by the attorney general, as such fact would be presumed. *Leavell v. State ex rel. Marsh*, 16 Ind. App. 72, 44 N.E. 687 (1896).

33-17-2-10. [Repealed.]

Compiler's Notes. This section, providing for examination of the clerk's office by the judge, was repealed by P.L.167-1984, § 92.

33-17-2-11. Delivery of records, books and papers to successor. —

At the end of his term, the clerk shall deliver to his successor all of the records, books, and papers belonging to his office. [P.L.171-1984, § 1.]

NOTES TO DECISIONS

In General.

Clerks on going out of office should pay over the money belonging to their offices to their

successors. *Board of County Comm'rs v. McFadden*, 88 Ind. 333 (1882).

CHAPTER 3

COURT FEES IN CIVIL ACTIONS GENERALLY

33-17-3-1 — 33-17-3-10. [Repealed.]

Compiler's Notes. This chapter, concerning court fees in civil actions, was repealed by P.L.192-1986, § 41, effective July 1, 1987. For

present provisions, see IC 33-19-3, IC 33-19-5-3.

CHAPTER 4

CLERK'S SERVICE FEES IN PROBATE AND RELATED TYPES OF PROCEEDINGS

33-17-4-1 — 33-17-4-15. [Repealed.]

Compiler's Notes. This chapter, concerning clerk's fees in probate and related proceedings, concerning the applicability of the

chapter, was repealed by P.L.192-1986, § 41, effective July 1, 1987.

CHAPTER 5

CLERK'S SERVICE FEES IN OTHER SPECIFIC TYPES OF PROCEEDINGS

33-17-5-1 — 33-17-5-8. [Repealed.]

Compiler's Notes. This chapter, concerning clerk's fees, was repealed by P.L.192-1986, § 41, effective July 1, 1987.

CHAPTER 6

ADDITIONAL FEES APPLICABLE IN CERTAIN CIVIL ACTIONS

33-17-6-1 — 33-17-6-7. [Repealed.]

Compiler's Notes. This chapter, concerning additional fees in certain civil actions, was

repealed by P.L.192-1986, § 41, effective July 1, 1987.

CHAPTER 7

SERVICE OF PROCESS FEES

33-17-7-1 — 33-17-7-3. [Repealed.]

Compiler's Notes. This chapter, concerning service of process fees, was repealed by P.L.192-1986, § 41, effective July 1, 1987. For

present provisions concerning court fees, see IC 33-19.

CHAPTER 8

COURT FEES IN CRIMINAL AND QUASI-CRIMINAL PROCEEDINGS

33-17-8-1 — 33-17-8-7. [Repealed.]

Compiler's Notes. This chapter, concerning court fees in criminal and quasi-criminal proceedings, was repealed by P.L.192-1986,

§ 41, effective July 1, 1987. For present provisions on court fees in criminal actions, see IC 33-19-2.

CHAPTER 9

ADDITIONAL FEES APPLICABLE IN CERTAIN CRIMINAL AND QUASI-CRIMINAL PROCEEDINGS

33-17-9-1 — 33-17-9-8. [Repealed.]

Compiler's Notes. This chapter, concerning fees applicable in certain criminal and quasi-criminal proceedings, was repealed by

P.L.192-1986, § 41, effective July 1, 1987. For present provisions on court fees in criminal actions, see IC 33-19-2.

CHAPTER 10

DOCUMENT FEES

33-17-10-1 — 33-17-10-14. [Repealed.]

Compiler's Notes. This chapter, relating to various document fees, was repealed by P.L.192-1986, § 41, effective July 1, 1987. For

present provisions regarding court fees, see IC 33-19.

CHAPTER 11

ADMINISTRATION OF GENERAL COURT FEES

33-17-11-1 — 33-17-11-7. [Repealed.]

Compiler's Notes. This chapter, concerning general court fees, was repealed by P.L.192-1986, § 41, effective July 1, 1987. For

present provisions regarding court fees, see IC 33-19.

CHAPTER 12

COLLECTION OF FEES BELONGING TO INDIVIDUALS

33-17-12-1 — 33-17-12-3. [Repealed.]

Compiler's Notes. This chapter, concerning collection of fees and payment, was repealed by P.L.192-1986, § 41, effective July 1,

1987. For present provisions regarding court fees, see IC 33-19.

CHAPTER 13

FEE BILLS

33-17-13-1 — 33-17-13-6. [Repealed.]

Compiler's Notes. This chapter, relating to fee bills, was repealed by P.L.192-1986, § 41, effective July 1, 1987.

CHAPTER 14

LICENSE FEES

SECTION.

33-17-14-1. [Repealed.]

33-17-14-2. Marriage license and certificate.

SECTION.

33-17-14-3. License to hold distress sale.

33-17-14-4. [Repealed.]

33-17-14-1. [Repealed.]

Compiler's Notes. This section, providing the fee for a junk dealer's license, was repealed by P.L.355-1989(ss), § 16.

33-17-14-2. Marriage license and certificate. — (a) For issuing a marriage license under IC 31-7-3, the clerk shall collect a fee of ten dollars (\$10). When collected, these fees shall be paid to the treasurer of state, who shall deposit the money in the state user fee fund established by IC 33-19-9-2.

(b) For issuing a marriage certificate under IC 31-11-4, the clerk shall collect a fee of:

- (1) eight dollars (\$8), if at least one (1) of the individuals is a resident of Indiana; or
- (2) fifty dollars (\$50), if neither of the individuals is a resident of Indiana.

When collected, these fees shall be deposited in the general fund of the county. [P.L.171-1984, § 1; P.L.33-1985, § 10; P.L.180-1986, § 3; P.L.258-1989, § 3; P.L.1-1994, § 162; P.L.4-1994, § 13; P.L.1-1997, § 131.]

33-17-14-3. License to hold distress sale. — For issuing a license to hold a distress sale under IC 25-18-1-6, the clerk shall collect a fee of:

- (1) Forty dollars (\$40) if the value of the inventory is no more than twenty-five thousand dollars (\$25,000);

(2) Sixty-five dollars (\$65) if the value of the inventory is more than twenty-five thousand dollars (\$25,000) but no more than fifty thousand dollars (\$50,000);

(3) One hundred dollars (\$100) if the value of the inventory is more than fifty thousand dollars (\$50,000) but no more than seventy-five thousand dollars (\$75,000); and

(4) One hundred fifty dollars (\$150) if the value of the inventory is more than seventy-five thousand dollars (\$75,000). [P.L.171-1984, § 1.]

33-17-14-4. [Repealed.]

Compiler's Notes. This section, providing a fee for a license issued to the owner of an improved stock sire, was repealed by P.L.167-1984, § 92.

ARTICLE 18

COURT FEES

33-18-1-1 — 33-18-37-4. [Repealed.]

Compiler's Notes. This article, relating to court fees, was repealed by P.L.305-1987, § 38. For present provisions, see IC 33-19. P.L.290-1987, § 2 purported to amend IC 33-18-36-14 but because of the repeal was not given effect.

ARTICLE 19

COURT FEES

CHAPTER

1. GENERAL PROVISIONS, 33-19-1-1 — 33-19-1-9.
2. GENERAL COURT COSTS PROVISIONS FOR CRIMINAL ACTIONS, 33-19-2-1 — 33-19-2-5.
3. GENERAL COURT COSTS PROVISIONS FOR CIVIL ACTIONS, 33-19-3-1 — 33-19-3-7.
4. MISCELLANEOUS GENERAL COURT COSTS PROVISIONS, 33-19-4-1 — 33-19-4-4.
5. COLLECTION OF COURT COSTS FEES, 33-19-5-1 — 33-19-5-7.

CHAPTER

6. COLLECTION OF ADDITIONAL FEES, 33-19-6-1 — 33-19-6-17.
7. DISTRIBUTION OF COURT FEES, 33-19-7-1 — 33-19-7-7.
8. LOCAL USER FEE FUNDS, 33-19-8-1 — 33-19-8-8.
9. STATE USER FEE FUND, 33-19-9-1 — 33-19-9-4.
10. JURY PAY FUND, 33-19-10-1 — 33-19-10-3.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 33-19-1-1. Applicability of article.
- 33-19-1-2. "Clerk" defined.
- 33-19-1-3. Disposition of fees.
- 33-19-1-4. Juror fees.
- 33-19-1-5. Witness fees — Criminal actions.

SECTION.

- 33-19-1-6. Witness fees — Other actions.
- 33-19-1-7. Procedure for claims.
- 33-19-1-8. Fee bill.
- 33-19-1-9. Scope of costs.

33-19-1-1. Applicability of article. — This article applies to all proceedings in:

- (1) Circuit courts (Article 7, Section 7 of the Constitution of the State of Indiana and IC 33-4);

- (2) Superior courts (IC 33-5);
- (3) County courts (IC 33-10.5);
- (4) Probate courts (IC 33-8);
- (5) Municipal courts (IC 33-6); and
- (6) City and town courts (IC 33-10.1).

[P.L.305-1987, § 1.]

33-19-1-2. “Clerk” defined. — As used in this article, “clerk” means:

- (1) A clerk of a circuit court under IC 33-17-1-1;
- (2) The clerk of a city or town court under IC 33-10.1; or
- (3) The judge of a city or town court that does not have a clerk.

[P.L.305-1987, § 1.]

33-19-1-3. Disposition of fees. — (a) Except for the state share prescribed by IC 33-19-7-1 for semiannual distribution, and as provided under IC 33-17-1-4(e) and IC 33-19-6-1.5, within thirty (30) days after the clerk collects a fee, the clerk shall forward the fee to:

- (1) the county auditor, if the clerk is a clerk of a circuit court; or
- (2) the city or town fiscal officer, if the clerk is the clerk of a city or town court.

(b) If part of the fee is collected on behalf of another person for service as a juror or witness, the county auditor or city or town fiscal officer shall forward that part of the fee to the person within forty-five (45) days after the auditor or fiscal officer receives the claim for the fee.

(c) Except for amounts deposited in a user fee fund established under IC 33-19-8, the county auditor shall distribute fees received from the clerk to:

- (1) the county treasurer for deposit in the county general fund, if the fee belongs to the county; and
- (2) the fiscal officer of a city or town, if the fee belongs to the city or town under IC 33-19-7-3.

(d) Except for amounts deposited in a user fee fund established under IC 33-19-8, the city or town fiscal officer shall deposit all fees received from a clerk in the treasury of the city or town.

(e) The clerk shall forward the state share of each fee to the state treasury at the clerk’s semiannual settlement for state revenue. [P.L.305-1987, § 1; P.L.12-1990, § 4; P.L.6-1991, § 3; P.L.64-1992, § 2; P.L.58-1993, § 15; P.L.4-1994, § 14; P.L.33-1998, § 7.]

33-19-1-4. Juror fees. — (a) Jurors of circuit, superior, county, probate, and municipal courts and members of a grand jury are entitled to fees equal to:

- (1) the mileage rate paid to state officers for each mile necessarily traveled to and from the court; and
- (2) payment at the rate of:
 - (A) fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled; and
 - (B) forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged.

(b) A county fiscal body may adopt an ordinance to pay from county funds a supplemental fee in addition to the fees prescribed by subsection (a)(2).

(c) Jurors of city and town courts are entitled to:

- (1) fifteen dollars (\$15) per day while in actual attendance; and
- (2) receive a sum for mileage equal to that sum per mile paid to state officers and employees for each mile necessarily traveled to and from the court.

(d) A city or town fiscal body may adopt an ordinance to pay from city or town funds a supplemental fee in addition to the fee prescribed by subsection (c)(1).

(e) A prospective juror who is summoned for jury duty and who reports to the summoning court on the day specified in the summons is in actual attendance on that day for the purposes of this section. [P.L.305-1987, § 1; P.L.58-1988, § 2; P.L.204-1997, § 1.]

Effective Dates. P.L.58-1988, § 4. July 1, 1989.

33-19-1-5. Witness fees — Criminal actions. — A witness in a criminal action may receive a fee:

- (1) Equal to the mileage paid to state officers for each mile required to travel to and from the court; and
- (2) For each day of attendance in court equal to:
 - (A) Fifteen dollars (\$15) for witnesses subpoenaed under IC 35-37-5-4; or
 - (B) Five dollars (\$5) for all other witnesses;

if the witness was summoned by the state, was named on the indictment or information, and testified under oath to a material fact in aid of the prosecution. [P.L.305-1987, § 1.]

33-19-1-6. Witness fees — Other actions. — A witness in an action listed in IC 33-19-5-2 through IC 33-19-5-6 is entitled to a fee:

- (1) Equal to the mileage paid to state officers for each mile required to travel to and from the court; and
- (2) Five dollars (\$5) for each day of attendance in court. [P.L.305-1987, § 1.]

Res Gestae. Immediate forfeiture of either real or personal property: procedures in the Comprehensive Drug Abuse Prevention &

Control Act of 1979, 21 U.S.C. 881, and related Indiana statutes, 39 (No. 6) Res Gestae 21 (1995).

NOTES TO DECISIONS

Award Denied.

Trial court did not err in not awarding expert witness fees of \$1,950 incurred for

expert's testimony, and a fee of \$80.00 for conducting a title search. *Linder v. Ticor Title Ins. Co.*, 647 N.E.2d 37 (1995).

33-19-1-7. Procedure for claims. — (a) The clerk shall note witness and juror fees when they are claimed and forward the claims to the county auditor or city or town fiscal officer.

(b) The clerk is not entitled to a fee for providing an affidavit or other proof of attendance to a juror or witness.

(c) The county auditor or city or town fiscal officer shall disburse juror or witness fees claimed under this section as provided in section 3(b) [IC 33-19-1-3(b)] of this chapter. [P.L.305-1987, § 1.]

33-19-1-8. Fee bill. — (a) Within seventy-five (75) days after judgment is entered in an action, the clerk shall issue an itemized fee bill for the collection of fees that were charged against the party in that action and that remain unpaid. The clerk shall present the fee bill for collection to the sheriff of a county where the debtor party resides or where the debtor party has property.

(b) The sheriff shall:

(1) Collect the amount due under the fee bill; and

(2) Return the fee bill to the clerk not more than sixty (60) days after the day the fee bill was issued.

(c) After the fee bill is presented to the sheriff, it has the effect of an execution and operates as a lien upon the real and personal property of the debtor.

(d) A successor of an officer may issue fee bills for the fees of the officer's predecessors in office in the manner provided under this chapter. A clerk may issue the fee bills of the sheriff or former sheriffs of the county in the same manner. [P.L.305-1987, § 1.]

33-19-1-9. Scope of costs. — The costs imposed by this article are for all proceedings in the action. [P.L.305-1987, § 1.]

CHAPTER 2

GENERAL COURT COSTS PROVISIONS FOR CRIMINAL ACTIONS

SECTION.

33-19-2-1. Applicability of chapter.

33-19-2-2. Liability for costs — Waiver.

33-19-2-3. Indigency hearing.

SECTION.

33-19-2-4. Prosecution costs paid by state.

33-19-2-5. IC 33-19-5-1 fees as costs.

33-19-2-1. Applicability of chapter. — This chapter applies in criminal actions. [P.L.305-1987, § 1.]

33-19-2-2. Liability for costs — Waiver. — (a) Costs in a criminal action are not a part of the sentence and may not be suspended. However, if:

(1) Two (2) or more charges against a person are joined for trial; and

(2) The person is convicted of two (2) or more offenses in the trial; the court may waive the person's liability for costs for all but one (1) of the offenses.

(b) If a person is acquitted or an indictment or information is dismissed by order of the court, the person is not liable for costs. [P.L.305-1987, § 1.]

NOTES TO DECISIONS

ANALYSIS

In general.

Acquittal.

Exemption from costs by jury.

Crime committed while on probation or parole.

Cruel and unusual punishment.

Discretion of court.

Form of judgment.

Indictment or information.

Witness fees.

In General.

All costs follow a judgment of conviction. *State v. Sauvaine*, 14 Ind. 21 (1860).

Acquittal.

When, by a judgment of the Supreme Court, the defendant is finally acquitted, no costs are taxed to him, but in other cases, he is liable for the costs he makes in such court. *Smith v. State*, 5 Ind. 541 (1854).

If a defendant was acquitted of a charge, but was held to answer another charge of which he was convicted, the costs made on the first charge could not be taxed against him. *Burch v. Dooley*, 123 Ind. 288, 24 N.E. 110 (1889).

Exemption from Costs by Jury.

The jury may exempt the defendant from the payment of all costs. *State v. Sevier*, 117 Ind. 338, 20 N.E. 245 (1888).

Some reason should exist for the jury relieving the defendant from the payment costs. *Welsh v. State*, 126 Ind. 71, 25 N.E. 883, 9 L.R.A. 664 (1890).

Crime Committed While on Probation or Parole.

The trial court was in error where it ordered the defendant to serve his sentence imposed under conviction for attempted murder consecutively with a sentence imposed in a prior case, as the defendant was not on

probation, parole, or serving a term of imprisonment at the time for the other crime. *Hutchinson v. State*, 477 N.E.2d 850 (Ind. 1985).

Cruel and Unusual Punishment.

So long as the imposition of consecutive sentences is supported by specific and detailed reasons and an indication that the court has considered the goal of rehabilitation, it will not constitute cruel and unusual punishment. *Smith v. State*, 474 N.E.2d 71 (Ind. 1985).

Discretion of Court.

The trial court is vested with wide discretion to determine whether a presumptive sentence will be enhanced due to aggravating factors involving the particular defendant or crime, and whether terms of multiple convictions will be served concurrently or consecutively. *Shippen v. State*, 477 N.E.2d 903 (Ind. 1985).

Form of Judgment.

Where the court followed the usual form in rendering judgment for fine and costs, the judgment was sufficient. *Strong v. State ex rel. Buskirk*, 57 Ind. 428 (1877).

Indictment or Information.

If a defendant was convicted on an indictment found after an information was filed, he could not be taxed with the costs on the information. *Jones v. State*, 9 Ind. App. 636, 37 N.E. 35 (1893).

Witness Fees.

If a defendant entered a plea of not guilty and the state summoned witnesses for the trial, and defendant then pleaded guilty, he was liable for the fees of all state witnesses who were summoned and attended. *Cameron v. State*, 37 Ind. App. 381, 76 N.E. 1021 (1906).

33-19-2-3. Indigency hearing. — (a) When the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order the person to pay:

- (1) the entire amount at the time sentence is pronounced;
 - (2) the entire amount at some later date; or
 - (3) specified parts at designated intervals.
- (b) Upon any default in the payment of the costs:
- (1) an attorney representing the county may bring an action on a debt for the unpaid amount; or

(2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due.

(c) If, after a hearing under subsection (a), the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk of the court shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under IC 33-9-11.5-1.

(d) A person ordered to pay part of the cost of representation under subsection (c) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and under Indiana law. [P.L.305-1987, § 1; P.L.137-1989, § 7; P.L.216-1996, § 2.]

NOTES TO DECISIONS

ANALYSIS

In general.

No imprisonment for failure to pay fine.

In General.

Trial court erred when it imposed fines and costs upon defendant without first deciding whether he was indigent. *Bitner v. State*, 546 N.E.2d 117 (Ind. App. 1989).

No Imprisonment for Failure to Pay Fine.

When fines or costs are imposed upon an indigent, the trial court must expressly state that the defendant shall not be imprisoned for failing to pay the fine. *Whitehead v. State*, 511 N.E.2d 284 (Ind. 1987), cert. denied, 484 U.S. 1031, 108 S. Ct. 761, 98 L. Ed. 2d 773 (1988); *Petty v. State*, 532 N.E.2d 610 (Ind. 1989).

33-19-2-4. Prosecution costs paid by state. — (a) The state shall pay all costs of trial in a prosecution for an offense committed:

- (1) By an inmate of a state correctional facility; and
- (2) In the county in which the correctional facility is located.

(b) The costs of trial to be paid under this section include:

- (1) Court fees; and
- (2) Expenses incurred by the county sheriff in returning the defendant to the jurisdiction of the court and keeping the defendant in custody until trial. [P.L.305-1987, § 1.]

33-19-2-5. IC 33-19-5-1 fees as costs. — The fees prescribed by IC 33-19-5-1 are costs and may be collected from a defendant against whom a conviction is entered. Any fine or penalty imposed is in addition to costs. [P.L.305-1987, § 1.]

CHAPTER 3

GENERAL COURT COSTS PROVISIONS FOR CIVIL ACTIONS

SECTION.

33-19-3-1. When fees not collectable.

33-19-3-2. Right to bring action without paying fees.

SECTION.

33-19-3-2.5. Proceeding commenced by person confined by department of correction.

SECTION.

33-19-3-3. Recovery of costs.

33-19-3-4. When prepayment of fees not required.

33-19-3-5. Service of process by certified mail.

SECTION.

33-19-3-6. Reimbursement for private personal service of process.

33-19-3-7. Name change actions.

33-19-3-1. When fees not collectable. — (a) The fees prescribed in civil actions (or paternity actions) may not be collected from the state or a political subdivision in an action brought by or on behalf of the state or any political subdivision.

(b) This section does not prevent the collecting of fees from a defendant when the state or political subdivision is successful in its action. [P.L.305-1987, § 1; P.L.355-1989(ss), § 12.]

Cited: State v. Puckett, 531 N.E.2d 518 (Ind. App. 1988).

33-19-3-2. Right to bring action without paying fees. — A person entitled to bring a civil action or to petition for the appointment of a guardian under IC 29-3-5 may do so without paying the required fees or other court costs upon filing in court, under oath and in writing, a statement:

- (1) Declaring that the person is unable to make the payments or to give security for them because of the person's indigency;
- (2) Declaring that the person believes that the person is entitled to the redress sought in the action; and
- (3) Setting forth briefly the nature of the action.

[P.L.305-1987, § 1; P.L.169-1988, § 5.]

Effective Dates. P.L.169-1988, § 13. July 1, 1989.

NOTES TO DECISIONS

ANALYSIS

Applicability to appeals.
Failure to establish indigency.

Applicability to Appeals.

This section applies solely to the waiver of fees and costs assessed attendant to the resolution of matters within nisi prius courts and has no application to the litigant preparing to

prosecute or defend an appeal. Campbell v. Criterion Group, 605 N.E.2d 150 (Ind. 1992).

Failure to Establish Indigency.

Defendant could not complain that the trial court did not transfer case to the plenary docket for a trial by jury, where she did not establish her indigency or request leave to proceed without payment of the deposit required for transfer. Stout v. Kokomo Manor Apts., 677 N.E.2d 1060 (Ind. App. 1997).

33-19-3-2.5. Proceeding commenced by person confined by department of correction. — (a) As used in this section, "offender" means a person confined by the department of correction.

(b) When an offender commences an action or a proceeding without paying fees or other court costs under section 2 [IC 33-19-3-2] of this chapter, the offender shall obtain from the appropriate official of the correctional

facility or facilities at which the offender is or was confined, a certified copy of the prisoner’s trust fund account statement for the six (6) months immediately preceding submission of the complaint or petition. The offender shall file the trust fund account statement in addition to the statement required under section 2 of this chapter.

(c) The offender shall pay a partial filing fee that is twenty percent (20%) of the greater of:

- (1) The average monthly deposits to the offender’s account; or
- (2) The average monthly balance in the offender’s account; for the six (6) months immediately preceding the filing of the complaint or petition.

However, the fee may not exceed the full statutory fee for the commencement of actions or proceedings.

(d) If the offender claims exceptional circumstances that render the offender unable to pay the partial filing fee required by this section, in addition to the statement required by section 2 of this chapter and the statement of account required by subsection (b), the offender shall submit an affidavit of special circumstances setting forth the reasons and circumstances that justify relief from the partial filing fee requirement.

(e) If the court approves the application to waive all fees, the court shall give written notice to the offender that all fees and costs relating to the filing and service will be waived. If the court denies the application to waive all fees, the court shall give written notice to the offender that the offender’s case will be dismissed if the partial filing fee is not paid within forty-five (45) days after the date of the order, or within an additional period that the court may, upon request, allow. Process concerning the offender’s case may not be served until the fee is paid. [P.L.146-1995, § 2.]

33-19-3-3. Recovery of costs. — A party for whom judgment is entered in a civil action is entitled to recover costs. [P.L.305-1987, § 1.]

NOTES TO DECISIONS

ANALYSIS	
Unrecoverable costs. —Bank fee.	to secure a stay of proceedings pending appeal was a discretionary expense, not a recoverable cost. <i>AgMax, Inc. v. Countrymark Coop.</i> , 661 N.E.2d 1259 (Ind. App. 1996).

Unrecoverable Costs.

- Bank Fee.
Bank fee charged for a letter of credit given

33-19-3-4. When prepayment of fees not required. — The prepayment of fees under this chapter is not required in appeals of civil matters to circuit courts from courts of inferior jurisdiction. [P.L.305-1987, § 1.]

33-19-3-5. Service of process by certified mail. — Court costs fees under this chapter include service of process by certified mail, unless service by sheriff is requested by the person who institutes the action. [P.L.305-1987, § 1.]

33-19-3-6. Reimbursement for private personal service of process.

— If personal service of process is carried out by a process server other than the sheriff, the party who paid for the private service is entitled to reimbursement of the cost of the private service as a part of any judgment that party may recover. [P.L.305-1987, § 1.]

NOTES TO DECISIONS**Recovery Allowed.**

Successful litigant in an action for ejectment was entitled to recover its private pro-

cess server costs amounting to \$15. *Greenbriar Coop. v. Riley*, 582 N.E.2d 441 (Ind. App. 1991).

33-19-3-7. Name change actions. — Notwithstanding IC 33-19-5-4, the clerk may not collect a separate civil fee for a name change action initiated under IC 31-15-2-18. [P.L.305-1987, § 1; P.L.1-1997, § 132.]

CHAPTER 4**MISCELLANEOUS GENERAL COURT COSTS PROVISIONS****SECTION.**

33-19-4-1. When prepayment of fees not required.

33-19-4-2. IC 33-19-5-2 fees as costs.

33-19-4-3. Collection of IC 33-19-5-4, IC 33--

SECTION.

19-5-5, and IC 33-19-5-6 fees when venue changed or action transferred.

33-19-4-4. Costs of publication by notice.

33-19-4-1. When prepayment of fees not required. — Prepayment of fees is not required in proceedings for:

(1) Adoption; or

(2) The appointment of a guardian.

[P.L.305-1987, § 1.]

33-19-4-2. IC 33-19-5-2 fees as costs. — The fees prescribed by IC 33-19-5-2 are costs for purposes of IC 34-28-5-4 and may be collected from a defendant against whom judgment is entered. Any penalty assessed is in addition to costs. [P.L.305-1987, § 1; P.L.1-1998, § 190.]

33-19-4-3. Collection of IC 33-19-5-4, IC 33-19-5-5, and IC 33-19-5-6 fees when venue changed or action transferred. — (a) This section applies in all actions listed in IC 33-19-5-4, IC 33-19-5-5, and IC 33-19-5-6.

(b) In an action where there has been or will be a change of venue or transfer from one (1) county to another, the clerk of the court from which the action is transferred shall collect from the party seeking change of venue a fee equal to that required by IC 33-19-5-4, IC 33-19-5-5, or IC 33-19-5-6. The clerk of the transferring court shall forward the fee collected under this section to the clerk of the court to which the action is transferred. [P.L.305-1987, § 1; P.L.355-1989(ss), § 13.]

33-19-4-4. Costs of publication by notice. — (a) If publication by notice is required by law in any action, the party or the attorney for the

party from whom the notice is required shall pay the cost of publication directly to the publisher of the notice.

(b) The party or the attorney for the party shall file with the clerk proof of publication of the notice. [P.L.305-1987, § 1.]

CHAPTER 5

COLLECTION OF COURT COSTS FEES

SECTION.

33-19-5-1. Fees in actions resulting in felony or misdemeanor convictions.

33-19-5-2. Fees in actions concerning infraction or ordinance violation — Exceptions.

33-19-5-3. Juvenile action fees.

SECTION.

33-19-5-4. Civil action fees generally.

33-19-5-5. Small claims fees.

33-19-5-6. Probate fees — Court costs fee.

33-19-5-7. Proration of court costs not required on receipt.

33-19-5-1. Fees in actions resulting in felony or misdemeanor convictions. — (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A marijuana eradication program fee.
- (3) An alcohol and drug services program user fee.
- (4) A law enforcement continuing education program fee.
- (5) A drug abuse, prosecution, interdiction, and correction fee.
- (6) An alcohol and drug countermeasures fee.
- (7) A child abuse prevention fee.
- (8) A domestic violence prevention and treatment fee.
- (9) A highway work zone fee.
- (10) A deferred prosecution fee (IC 33-19-6-16.2).

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-14-1-7 requires payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

- (1) The pretrial diversion fee.
- (2) The marijuana eradication program fee.
- (3) The alcohol and drug services program user fee.
- (4) The law enforcement continuing education program fee.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) First, the clerk shall apply the partial payment to general court costs.
- (2) Second, if there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the partial payment for deposit in the appropriate county user fee fund.
- (3) Third, if there is money remaining after distribution under subdivision (2), the clerk shall distribute the partial payment for deposit in the state user fee fund.
- (4) Fourth, if there is money remaining after distribution under subdivision (3), the clerk shall distribute the partial payment to any other applicable user fee fund.
- (5) Fifth, if there is money remaining after distribution under subdivision (4), the clerk shall apply the partial payment to any outstanding fines owed by the defendant. [P.L.305-1987, § 1; P.L.40-1988, § 3; P.L.51-1989, § 5; P.L.126-1989, § 17; P.L.284-1989, § 6; P.L.30-1991, § 10; P.L.64-1992, § 3; P.L.133-1992, § 61; P.L.279-1995, § 8; P.L.280-1995, § 8; P.L.216-1996, § 3; P.L.209-1996, § 8; P.L.2-1997, § 71.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 8 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency

and § 8 provided that the amendment take effect July 1, 1997.

P.L.216-1996, § 3. July 1, 1997.

NOTES TO DECISIONS

Jury Costs.

Trial court had no power to assess jury costs

against convicted defendant. *Gooch v. State*, 685 N.E.2d 152 (Ind. App. 1997).

33-19-5-2. Fees in actions concerning infraction or ordinance violation — Exceptions. — (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or
- (2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) An alcohol and drug services program user fee.
- (3) A law enforcement continuing education program fee.
- (4) An alcohol and drug countermeasures fee.
- (5) A highway work zone fee.
- (6) A deferred prosecution fee (IC 33-19-6-16.2).

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the user fee fund established under IC 33-19-8:

- (1) The alcohol and drug services program user fee.
- (2) The law enforcement continuing education program fee.
- (3) The deferral program fee.

(d) The defendant is not liable for any ordinance violation costs fee in an action in which:

- (1) the defendant was charged with an ordinance violation subject to IC 33-6-3;
- (2) the defendant denied the violation under IC 33-6-3-2;
- (3) proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal); and
- (4) the defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

- (1) an initial user's fee not to exceed fifty-two dollars (\$52); and
- (2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program. [P.L.305-1987, § 1; P.L.40-1988, § 4; P.L.106-1988, § 3; P.L.177-1988, § 6; P.L.126-1989, § 18; P.L.288-1989, § 1; P.L.1-1990, § 325; P.L.64-1992, § 4; P.L.60-1995, § 3; P.L.279-1995, § 9; P.L.60-1995, § 3; P.L.280-1995, § 9; P.L.209-1996, § 9; P.L.204-1997, § 2; P.L.1-1998, § 191.]

Effective Dates. P.L.133-1992, § 90, declared an emergency and provided that the amendment take effect July 1, 1993.

P.L.60-1995, § 3. July 1, 1997.

P.L.280-1995, § 26, declared an emergency and § 9 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 9 provided that the amendment take effect July 1, 1997.

Opinions of Attorney General. Former IC 34-4-32-4(g) (repealed; for present similar provisions, see IC 34-28-5-5) provided a specific exception to the rule requiring the payment of court costs when a judgment was entered for a violation which constituted an infraction. If a judgment was entered for a violation constituting a Class D infraction, the defendant was not liable for court costs. 1987, No. 87-4, p. 16.

33-19-5-3. Juvenile action fees. — (a) For each action filed under:

- (1) IC 31-34 or IC 31-37 (delinquent children and children in need of services); or
- (2) IC 31-14 (paternity);

the clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120).

(b) In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A marijuana eradication program fee.

- (3) An alcohol and drug services program user fee.
- (4) A law enforcement continuing education program fee.
- (5) An alcohol and drug countermeasures fee.

(c) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

- (1) The marijuana eradication program fee.
- (2) The alcohol and drug services program user fee.
- (3) The law enforcement continuing education program fee.

[P.L.305-1987, § 1; P.L.40-1988, § 5; P.L.126-1989, § 19; P.L.279-1995, § 10; P.L.280-1995, § 10; P.L.1-1997, § 133.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 10 provided that the amendment take effect July 1, 1997.

33-19-5-4. Civil action fees generally. — (a) For each civil action except:

- (1) proceedings to enforce a statute defining an infraction under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);
 - (2) proceedings to enforce an ordinance under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);
 - (3) proceedings in juvenile court under IC 31-34 or IC 31-37;
 - (4) proceedings in paternity under IC 31-14;
 - (5) proceedings in small claims court under IC 33-11.6; and
 - (6) proceedings in actions under section 6 [IC 33-19-5-6] of this chapter;
- the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars (\$100), except as provided in subsection (b).

(b) For each proceeding for the issuance of a protective order under IC 34-26-2:

- (1) the clerk shall initially collect thirty-five dollars (\$35) of the civil costs fee from the party that filed the action or the court may waive the initial thirty-five dollars (\$35) of the civil costs fee for the party that filed the action; and
- (2) upon disposition of the protective order petition under IC 34-26-2, the court may order that:
 - (A) the remainder of the civil costs fee, in the amount of sixty-five dollars (\$65), be assessed against the respondent in the action as provided in IC 34-26-2-4 or against the party that filed the action; and
 - (B) the initial thirty-five dollar (\$35) civil costs fee be reimbursed by the respondent in the action to the party that filed the action or assessed against the respondent in the action as provided in IC 34-26-2-4.

(c) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A support and maintenance fee.

[P.L.305-1987, § 1; P.L.279-1995, § 11; P.L.280-1995, § 11; P.L.31-1996, § 16; P.L.32-1996, § 16; P.L.1-1997, § 134; P.L.1-1998, § 192.]

Compiler's Notes. P.L.199-1997, § 7, effective July 1, 1997, provides:

"(a) This SECTION applies to the circuit and superior courts of a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000) in which dissolution of marriage actions are filed.

"(b) Notwithstanding IC 33-19-5-4, if a county meets the requirements of this SECTION, the clerk of the court shall collect from the party filing a dissolution of marriage action under IC 31 after December 31, 1997, a civil costs fee of one hundred twenty dollars (\$120). Within thirty (30) days after the clerk collects a fee, the clerk shall forward to the county auditor the difference between the fees collected under this subsection and the fees that would have been collected under IC 33-19-5-4. The county auditor shall deposit the fees forwarded by the clerk under this subsection into the alternative dispute resolution fund of the court for which the fees were collected.

"(c) There is established an alternative dispute resolution fund for the circuit court and an alternative dispute resolution fund for the superior court. The exclusive source of money for each fund shall be the fees collected under subsection (b) for the circuit or superior court, respectively. The funds shall be used to foster alternative dispute resolution, including mediation, reconciliation, and parental counseling. Litigants referred by the court to services covered by the fund shall be required to make a copayment for the services in an amount determined by the court. The funds shall be administered by the circuit or superior court, respectively. Money in each fund at the end of a fiscal year does not revert to the county

general fund, but remains in the fund for the uses specified in this subsection.

"(d) A county desiring to participate in the program under this SECTION must submit a plan to the Indiana judicial conference not later than September 30, 1997. The plan must include information concerning how the county proposes to carry out the purposes of the alternative dispute resolution fund as set out in subsection (c). The judicial conference shall determine from the plan submitted under this subsection whether to approve the county's participation in the program. The judicial conference may request such additional information from the county as necessary to assist in a determination under this subsection.

"(e) A county that participates in the program under this SECTION shall submit a report to the Indiana judicial conference not later than December 31, 1999, summarizing the results of the program.

"(f) This SECTION expires July 1, 2000."

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 11 provided that the amendment take effect July 1, 1997.

Cross References. Collection where venue changed or action transferred, IC 33-19-4-3.

Res Gestae. Legislative update, 40 (No. 4) Res Gestae 36 (1996).

Opinions of Attorney General. The Indiana General Assembly did not intend for both the fifty-five dollar general civil action fee under this section and the thirty dollar small claims fee under IC 33-19-5-5 to apply to small claims actions in city courts in Lake County. Since IC 33-19-5-5 concerning small claims fees is the more specific section, it is applicable. 1987, No. 87-15, p. 72.

33-19-5-5. Small claims fees. — (a) For each small claims action the clerk shall collect from the party filing the action a small claims costs fee of thirty-five dollars (\$35).

(b) In addition to a small claims costs fee collected under this section, the clerk shall collect a document fee if it is required under IC 33-19-6. [P.L.305-1987, § 1; P.L.334-1989(ss), § 38; P.L.12-1992, § 140; P.L.280-1995, § 12; P.L.205-1997, § 1.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 12 provided that the amendment take effect July 1, 1997.

33-19-5-6. Probate fees — Court costs fee. — (a) Except as provided under subsection (c), for each action filed under:

- (1) IC 6-4.1-5 (determination of inheritance tax);
- (2) IC 29 (probate); and
- (3) IC 30 (trusts and fiduciaries);

the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120).

(b) In addition to the probate costs fee collected under this section, the clerk shall collect from the party filing the action a document fee if it is required under IC 33-19-6.

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary. [P.L.305-1987, § 1; P.L.40-1988, § 6; P.L.154-1990, § 14; P.L.279-1995, § 12; P.L.280-1995, § 13; P.L.209-1996, § 10.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 13 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 10 provided that the amendment take effect July 1, 1997.

Cross References. Collection where venue changed or action transferred, IC 33-19-4-3.

33-19-5-7. Proration of court costs not required on receipt. — The clerk is not required to show on each receipt for court costs collected the proration of court costs:

- (1) Remitted to the auditor of state, the county auditor, and the municipality as specified in IC 33-19-7; or
 - (2) Collected for any funds specified in IC 33-19-6.
- [P.L.280-1995, § 14.]

CHAPTER 6

COLLECTION OF ADDITIONAL FEES

SECTION.

- 33-19-6-1. Fee for preparing transcript or copy of record.
- 33-19-6-1.5. Establishment of clerk's record perpetuation fund.
- 33-19-6-2. Fee for authenticating certificate under seal.
- 33-19-6-3. Fee for preparing or recording transcript of judgment to become lien on real estate.
- 33-19-6-4. Forwarding of fees.
- 33-19-6-5. Fees where person required to pay support or maintenance payments through clerk.
- 33-19-6-6. Marijuana eradication program fee.
- 33-19-6-7. Alcohol and drug services program fee — Law enforcement continuing education program fee.
- 33-19-6-8. [Repealed.]

SECTION.

- 33-19-6-9. Drug abuse, prosecution, interdiction, and correction fee.
- 33-19-6-10. Collection of fee for suspension of driving privileges.
- 33-19-6-11. Collection of alcohol abuse deterrent program fee by probation department.
- 33-19-6-12. Child abuse prevention fee.
- 33-19-6-13. Domestic violence prevention and treatment fee.
- 33-19-6-14. Highway work zone fees.
- 33-19-6-15. Fees for service of process.
- 33-19-6-15.5. Additional duties of clerk.
- 33-19-6-16. [Repealed.]
- 33-19-6-16.2. Fees for deferred prosecutions.
- 33-19-6-16.3. Safe schools fee.
- 33-19-6-17. Jury fees in actions concerning infraction or ordinance violation.

33-19-6-1. Fee for preparing transcript or copy of record. —

(a) This section applies to a document fee for preparing a transcript or copy of any record. However, this section does not apply to:

(1) The preparation or copying of a record:

(A) Through the use of enhanced access under IC 5-14-3; or

(B) By a governmental entity using an electronic device; and

(2) The transmitting of a document by facsimile machine or other electronic device.

(b) Except as provided in subsection (c), the clerk shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing.

(c) The legislative body of a county may adopt by ordinance a schedule of document fees to be collected by a clerk under this section. If an ordinance has been adopted, the clerk shall collect document fees according to the schedule. However, the document fee collected by the clerk under this subsection may not exceed one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing. [P.L.305-1987, § 1; P.L.286-1989, § 3; P.L.58-1993, § 16.]

33-19-6-1.5. Establishment of clerk's record perpetuation fund. —

(a) Each clerk shall establish a clerk's record perpetuation fund. The clerk shall deposit in the fund all revenue received by the clerk for the transmitting of documents by facsimile machine to a person under IC 5-14-3.

(b) The clerk may use any money in the fund for the following purposes:

(1) The preservation of records.

(2) The improvement of record keeping systems and equipment.

[P.L.58-1993, § 17.]

33-19-6-2. Fee for authenticating certificate under seal. — Notwithstanding IC 5-14-3, the clerk shall collect a document fee of one dollar (\$1) for each certificate under seal attached in authentication of a copy of any record, paper, or transcript. [P.L.305-1987, § 1; P.L.58-1993, § 18.]

33-19-6-3. Fee for preparing or recording transcript of judgment to become lien on real estate. — The clerk shall collect a document fee of three dollars (\$3) for preparing or recording a transcript of a judgment to become a lien on real estate. [P.L.305-1987, § 1.]

33-19-6-4. Forwarding of fees. — The clerk shall forward document fees collected under this chapter to the county auditor or city or town fiscal officer in accordance with IC 33-19-1-3(a). [P.L.305-1987, § 1.]

33-19-6-5. Fees where person required to pay support or maintenance payments through clerk. — (a) This section applies to an action in which a final court order requires a person to pay support or maintenance payments through the clerk.

(b) The clerk shall collect a fee in addition to support and maintenance payments. The fee is:

(1) twenty dollars (\$20) for the calendar year in which the initial order is entered, unless the first payment is due after June 30 of that calendar year;

(2) ten dollars (\$10) for the calendar year in which the initial order was entered, if the first payment is due after June 30 of that calendar year; and

(3) in each subsequent year in which the initial order or a modified order is in effect, twenty dollars (\$20) if the fee is paid before February 1, or thirty dollars (\$30) if paid after January 31.

(c) The fee required under subsection (b) is due at the time that the first support or maintenance payment for the calendar year in which the fee must be paid is due.

(d) The clerk may not deduct the fee from a support or maintenance payment.

(e) Except as provided under IC 33-17-1-4(e), the clerk shall forward the fee collected under this section to the county auditor in accordance with IC 33-19-1-3(a). [P.L.305-1987, § 1; P.L.5-1988, § 178; P.L.6-1991, § 4; P.L.33-1998, § 8.]

Cited: *Winters v. Mowery*, 836 F. Supp. 1419 (S.D. Ind. 1993).

33-19-6-6. Marijuana eradication program fee. — (a) This section applies to criminal actions.

(b) The clerk shall collect the marijuana eradication program fee set by the court under IC 15-3-4.6-4.1 if:

(1) A weed control board has been established in the county under IC 15-3-4.6-1; and

(2) The person has been convicted of an offense under IC 35-48-4 in a case prosecuted in that county.

(c) The court may set a fee under this section of not more than three hundred dollars (\$300). [P.L.305-1987, § 1.]

33-19-6-7. Alcohol and drug services program fee — Law enforcement continuing education program fee. — (a) This section applies to criminal, infraction, and ordinance violation actions. However, it does not apply to a case excluded under IC 33-19-5-2(d).

(b) The clerk shall collect the alcohol and drug services program fee set by the court under IC 12-23-14-16 in a county that has established an alcohol and drug services program.

(c) In each action in which a defendant is found to have:

(1) Committed a crime;

(2) Violated a statute defining an infraction; or

(3) Violated an ordinance of a municipal corporation;

the clerk shall collect a law enforcement continuing education program fee of three dollars (\$3). [P.L.305-1987, § 1; P.L.177-1988, § 7; P.L.2-1992, § 854.]

33-19-6-8. [Repealed.]

Compiler's Notes. This section, as added by P.L.106-1988, § 4, relating to a flood control services fee, was repealed by P.L.40-1988, § 9.

33-19-6-9. Drug abuse, prosecution, interdiction, and correction fee. — (a) This section applies to criminal actions.

(b) The court shall assess a drug abuse, prosecution, interdiction, and correction fee of at least two hundred dollars (\$200) and not more than one thousand dollars (\$1,000) against a person convicted of an offense under IC 35-48-4.

(c) In determining the amount of the drug abuse, prosecution, interdiction, and correction fee assessed against a person under subsection (b), a court shall consider the person's ability to pay the fee.

(d) The clerk shall collect the drug abuse, prosecution, interdiction, and correction fee set by the court when a person is convicted of an offense under IC 35-48-4. [P.L.51-1989, § 6; P.L.12-1990, § 5.]

33-19-6-10. Collection of fee for suspension of driving privileges. — In each action in which a person is found to have:

- (1) committed an offense under IC 9-30-5;
- (2) violated a statute defining an infraction under IC 9-30-5; or
- (3) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

and the person's driving privileges are suspended by the court or the bureau of motor vehicles as a result of the finding, the clerk shall collect an alcohol and drug countermeasures fee of two hundred dollars (\$200). [P.L.126-1989, § 20; P.L.12-1990, § 6; P.L.2-1991, § 93; P.L.85-1998, § 2.]

Compiler's Notes. P.L.85-1998, § 4, effective July 1, 1998, provides that IC 33-19-6-10, as amended by P.L.85-1998, § 2, applies to findings under IC 9-30-5 made after June 30, 1998, regardless of when the action was filed.

33-19-6-11. Collection of alcohol abuse deterrent program fee by probation department. — (a) This section applies to an action in a circuit court in a county that has established a program under IC 9-30-9.

(b) The probation department shall collect an alcohol abuse deterrent program fee and a medical fee set by the court under IC 9-30-9-8 and deposit it into the supplemental adult probation services fund. [P.L.126-1989, § 21; P.L.2-1991, § 94; P.L.216-1996, § 4.]

33-19-6-12. Child abuse prevention fee. — In each criminal action in which:

- (1) a person is found to have committed the offense of:
 - (A) murder (IC 35-42-1-1);
 - (B) causing suicide (IC 35-42-1-2);
 - (C) voluntary manslaughter (IC 35-42-1-3);
 - (D) reckless homicide (IC 35-42-1-5);
 - (E) battery (IC 35-42-2-1);
 - (F) rape (IC 35-42-4-1);

- (G) criminal deviate conduct (IC 35-42-4-2);
- (H) child molesting (IC 35-42-4-3);
- (I) child exploitation (IC 35-42-4-4);
- (J) vicarious sexual gratification (IC 35-42-4-5);
- (K) child solicitation (IC 35-42-4-6);
- (L) incest (IC 35-46-1-3);
- (M) neglect of a dependent (IC 35-46-1-4);
- (N) child selling (IC 35-46-1-4); or
- (O) child seduction (IC 35-42-4-7); and

(2) the victim of the offense is less than eighteen (18) years of age; the court shall order the person to pay a child abuse prevention fee of one hundred dollars (\$100) to the clerk. [P.L.30-1991, § 11; P.L.4-1994, § 15; P.L.117-1996, § 2.]

33-19-6-13. Domestic violence prevention and treatment fee. — In each criminal action in which:

- (1) A person is found to have committed the offense of:

- (A) Murder (IC 35-42-1-1);
- (B) Causing suicide (IC 35-42-1-2);
- (C) Voluntary manslaughter (IC 35-42-1-3);
- (D) Reckless homicide (IC 35-42-1-5);
- (E) Battery (IC 35-42-2-1); or
- (F) Rape (IC 35-42-4-1); and

- (2) The victim is a spouse or former spouse of the person who committed an offense under subdivision (1);

the court shall order the person to pay a domestic violence prevention and treatment fee of fifty dollars (\$50) to the clerk. [P.L.30-1991, § 12; P.L.4-1994, § 16.]

33-19-6-14. Highway work zone fees. — (a) This section applies to criminal, infraction, and ordinance violation actions that are traffic offenses (as defined in IC 9-30-3-5).

(b) The clerk shall collect a highway work zone fee of fifty cents (\$0.50). However, if the criminal action, infraction, or ordinance violation is exceeding a worksite speed limit (as provided in IC 9-21-5-11) and the judge orders the clerk to collect the fee for exceeding a worksite speed limit, the clerk shall collect a highway work zone fee of twenty-five dollars and fifty cents (\$25.50). [P.L.64-1992, § 5; P.L.85-1998, § 3.]

33-19-6-15. Fees for service of process. — (a) In addition to any other fee for service of process, if:

- (1) A person files a civil action outside Indiana; and
- (2) A sheriff in Indiana is requested to perform a service of process:
 - (A) Associated with the civil action; and
 - (B) In Indiana;

the sheriff shall collect from the person who filed the civil action a service of process fee of forty dollars (\$40).

(b) A sheriff shall transfer fees collected under this section to the county auditor of the county in which the sheriff has jurisdiction to be deposited:

- (1) In the pension trust established by the county under IC 36-8-10-12; or
- (2) If the county has not established a pension trust under IC 36-8-10-12, in the county general fund. [P.L.152-1994, § 1; P.L.2-1995, § 124.]

33-19-6-15.5. Additional duties of clerk. — In addition to any other duties, a clerk shall do the following:

- (1) Collect and transfer additional judgments to a county auditor under IC 9-18-2-41.
- (2) Deposit funds collected as judgments in the state highway fund under IC 9-20-18-12.
- (3) Deposit funds in the conservation officers fish and wildlife fund under IC 14-22-38-4, IC 14-22-38-5, and IC 14-22-40-8.
- (4) Deposit funds collected as judgments in the state general fund under IC 34-28-5-4. [P.L.4-1994, § 17; P.L.1-1995, § 72; P.L.133-1996, § 8; P.L.1-1998, § 193.]

33-19-6-16. [Repealed.]

Compiler's Notes. This section, as added by P.L.61-1995 concerning safe school fees, and as added by P.L.280-1995 concerning deferred prosecution fees, was repealed by P.L.209-1996, § 18, effective July 1, 1996, and by P.L.2-1997, § 96, effective July 1, 1997. For present similar provisions regarding safe school fees, see IC 33-19-6-16.3. For present

similar provisions regarding deferred prosecution fees, see IC 33-19-6-16.2.

P.L.2-1997, § 96, effective retroactively to July 1, 1996, provides: "Notwithstanding P.L.209-1996, SECTION 12, IC 33-19-6-16 is repealed July 1, 1997". P.L.209-1996, § 12, added IC 33-19-6-16.3, effective July 1, 1997.

33-19-6-16.2. Fees for deferred prosecutions. — (a) This section applies to actions in which the court defers prosecution under IC 33-14-1-7.

(b) In each action in which prosecution is deferred, the clerk shall collect from the defendant a fee of fifty dollars (\$50) for court costs. [P.L.279-1995, § 13; P.L.209-1996, § 11.]

Effective Dates. P.L.209-1996, § 20, declared an emergency and § 11 provided that the amendment take effect July 1, 1997.

33-19-6-16.3. Safe schools fee. — (a) In each criminal action in which a person is convicted of an offense in which the possession or use of a firearm was an element of the offense, the court shall assess a safe schools fee of not less than two hundred dollars (\$200) and not more than one thousand dollars (\$1,000).

(b) In determining the amount of the safe schools fee assessed against a person under subsection (a), a court shall consider the person's ability to pay the fee.

(c) The clerk shall collect the safe schools fee set by the court when a person is convicted of an offense in which the possession or use of a firearm was an element of the offense. [P.L.209-1996, § 12.]

Effective Dates. P.L.209-1996, § 20, declared an emergency and § 12 provided that this section take effect July 1, 1997.

33-19-6-17. Jury fees in actions concerning infraction or ordinance violation. — (a) In each action in which a defendant is found to have committed a crime, violated a statute defining an infraction, or violated an ordinance of a municipal corporation, the clerk shall collect a jury fee of two dollars (\$2).

(b) The fee collected under this section shall be deposited into the county user fee fund established by IC 33-19-8-5. [P.L.204-1997, § 3.]

CHAPTER 7

DISTRIBUTION OF COURT FEES

SECTION.

33-19-7-1. Distribution by circuit court clerk for state general fund — Distribution for state user fee fund — Distribution for county drug free community fund.

33-19-7-2. Distribution by circuit court clerk to county auditor.

33-19-7-3. Qualified municipality share.

33-19-7-4. Distribution by city or town court clerk to state general fund — Distribution to county auditor

SECTION.

— Distribution for state user fee fund — Distribution for county drug free community fund.

33-19-7-5. Transfer to state treasurer — Distribution.

33-19-7-6. Appropriations in counties having judicial circuits in which IC 31-12-1 or 31-12-2 applies.

33-19-7-7. Appropriations in counties in which pension trust established.

33-19-7-1. Distribution by circuit court clerk for state general fund — Distribution for state user fee fund — Distribution for county drug free community fund. — (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-3(a) (juvenile costs fees).
- (4) IC 33-19-5-4(a) (civil costs fees).
- (5) IC 33-19-5-5(a) (small claims costs fees).
- (6) IC 33-19-5-6(a) (probate costs fees).
- (7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(c) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(8). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17. [P.L.305-1987, § 1; P.L.51-1989, § 7; P.L.126-1989, § 22; P.L.12-1990, § 7; P.L.30-1991, § 13; P.L.64-1992, § 6; P.L.1-1993, § 233; P.L.50-1993, § 5; P.L.4-1994, § 18; P.L.61-1995, § 7; P.L.279-1995, § 14; P.L.280-1995, § 16; P.L.117-1996, § 3; P.L.209-1996, § 13; P.L.216-1996, § 5.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 16 provided that the amendment take effect July 1, 1997.

P.L.117-1996, § 7, declared an emergency and § 3 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 13 provided that the amendment take effect July 1, 1997.

P.L.216-1996, § 5. July 1, 1997.

33-19-7-2. Distribution by circuit court clerk to county auditor. —

The clerk of a circuit court shall forward the county share of fees collected to the county auditor in accordance with IC 33-19-1-3(a). The auditor shall retain as the county share twenty-seven percent (27%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-3(a) (juvenile costs fees).

(4) IC 33-19-5-4(a) (civil costs fees).

(5) IC 33-19-5-5(a) (small claims costs fees).

(6) IC 33-19-5-6(a) (probate costs fees).

(7) IC 33-19-6-16.2 (deferred prosecution fees).

[P.L.305-1987, § 1; P.L.280-1995, § 17; P.L.209-1996, § 14.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 17 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 14 provided that the amendment take effect July 1, 1997.

33-19-7-3. Qualified municipality share. — (a) The qualified municipality share to be distributed to each city and town maintaining a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, county, or municipal court located in the county is three percent (3%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-3(a) (juvenile costs fees).
- (4) IC 33-19-5-4(a) (civil costs fees).
- (5) IC 33-19-5-5(a) (small claims costs fees).
- (6) IC 33-19-5-6(a) (probate costs fees).
- (7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The county auditor shall determine the amount to be distributed to each city and town qualified under subsection (a) as follows:

STEP ONE: Determine the population of the qualified city or town.

STEP TWO: Add the populations of all qualified cities and towns determined under STEP ONE.

STEP THREE: Divide the population of each qualified city and town by the sum determined under STEP TWO.

STEP FOUR: Multiply the result determined under STEP THREE for each qualified city and town by the amount of the qualified municipality share.

(c) The county auditor shall semiannually distribute to each city and town described in subsection (a) the amount computed for that city or town under STEP FOUR of subsection (b). [P.L.305-1987, § 1; P.L.280-1995, § 18; P.L.209-1996, § 15.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 18 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 15 provided that the amendment take effect July 1, 1997.

33-19-7-4. Distribution by city or town court clerk to state general fund — Distribution to county auditor — Distribution for state user fee fund — Distribution for county drug free community fund. —

(a) The clerk of a city or town court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).
- (4) IC 33-19-5-5 (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).

(b) Once each month the city or town fiscal officer shall distribute to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).

- (4) IC 33-19-5-5 (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).
- (c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:
 - (1) IC 33-19-5-1(a) (criminal costs fees).
 - (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
 - (3) IC 33-19-5-4(a) (civil costs fees).
 - (4) IC 33-19-5-5 (small claims costs fees).
 - (5) IC 33-19-6-16.2 (deferred prosecution fees).
- (d) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9 the following:
 - (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).
 - (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
 - (3) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).
 - (4) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.
- (e) The clerk of a city or town court shall monthly distribute to the county auditor the following:
 - (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).
 - (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11. [P.L.305-1987, § 1; P.L.51-1989, § 8; P.L.126-1989, § 23; P.L.334-1989(ss), § 39; P.L.12-1990, § 8; P.L.64-1992, § 7; P.L.1-1993, § 234; P.L.50-1993, § 6; P.L.4-1994, § 19; P.L.280-1995, § 19; P.L.209-1996, § 16; P.L.216-1996, § 6.]

Effective Dates. P.L.280-1995, § 26, declared an emergency and § 19 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency

and § 16 provided that the amendment take effect July 1, 1997.

P.L.216-1996, § 6. July 1, 1997.

33-19-7-5. Transfer to state treasurer — Distribution. — (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state six million seven hundred four thousand two hundred fifty-seven dollars (\$6,704,257) for distribution under subsection (b).

(b) On June 30 and on December 31 of each year the treasurer of state shall deposit into:

- (1) the family violence and victim assistance fund established under IC 12-18-5-2 an amount equal to eleven and eight-hundredths percent (11.08%);
 - (2) the Indiana judges' retirement fund established under IC 33-13-8 an amount equal to twenty-five and twenty-one hundredths percent (25.21%);
 - (3) the law enforcement academy building fund established under IC 5-2-1-13 an amount equal to three and fifty-two hundredths percent (3.52%);
 - (4) the law enforcement training fund established under IC 5-2-1-13 an amount equal to fourteen and nineteen-hundredths percent (14.19%);
 - (5) the violent crime victims compensation fund established under IC 5-2-6.1-40 an amount equal to sixteen and fifty-hundredths percent (16.50%);
 - (6) the motor vehicle highway account an amount equal to twenty-six and ninety-five hundredths percent (26.95%);
 - (7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to thirty-two hundredths of one percent (0.32%); and
 - (8) the Indiana judicial center drug and alcohol programs fund established under IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and twenty-three hundredths percent (2.23%);
- of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year the auditor of state shall transfer to the treasurer of state one million two hundred thousand dollars (\$1,200,000) for deposit into the public defense fund established under IC 33-9-14. [P.L.305-1987, § 1; P.L.28-1988, § 111; P.L.51-1989, § 9; P.L.126-1989, § 24; P.L.284-1989, § 7; P.L.2-1992, § 855; P.L.47-1993, § 12; P.L.1-1995, § 73; P.L.60-1995, § 4; P.L.279-1995, § 18; P.L.280-1995, § 20; P.L.209-1996, § 17; P.L.122-1997, § 7; P.L.202-1997, § 7.]

Effective Dates. P.L.60-1995, § 4. July 1, 1997.

P.L.280-1995, § 26, declared an emergency and § 20 provided that the amendment take effect July 1, 1997.

P.L.209-1996, § 20, declared an emergency and § 17 provided that the amendment take effect July 1, 1997.

33-19-7-6. Appropriations in counties having judicial circuits in which IC 31-12-1 or 31-12-2 applies. — In a county having a judicial circuit in which either IC 31-12-1 or IC 31-12-2 applies, the county fiscal body shall annually appropriate an amount necessary to carry out the administration and the purposes of the programs established under these chapters. Requests for funding under this section must be submitted under IC 36-2-5-4 or IC 36-3-6-4. [P.L.305-1987, § 1; P.L.1-1997, § 135.]

33-19-7-7. Appropriations in counties in which pension trust established. — (a) This section applies to a county in which there is established a pension trust under IC 36-8-10-12.

(b) From the county share distributed under section 2 [IC 33-19-7-2] of this chapter and deposited into the county general fund, the county fiscal

body shall appropriate twelve dollars (\$12) for each verified claim presented by the sheriff to the fiscal body under subsection (c). Amounts appropriated under this subsection shall be deposited by the county auditor into the pension trust established under IC 36-8-10-12.

(c) For each service of a writ, order, process, notice, tax warrant, or other paper completed by the sheriff, the sheriff shall submit to the county fiscal body a verified claim of service. [P.L.305-1987, § 1.]

Opinions of Attorney General. Deposits to the county police pension trust fund, in counties that have established a county police pension trust fund under this section, are to be made by the county auditor, after appropriation by the county fiscal body pursuant to

this section from the county's forty-seven percent share of all the general cost fees collected by the clerk under IC 33-19-5-1 through 33-19-5-6 and paid to the county auditor in accordance with IC 33-19-1-3(a). 1987, No. 87-14, p. 68.

CHAPTER 8

LOCAL USER FEE FUNDS

SECTION.

33-19-8-1. "City or town fund" defined.

33-19-8-2. "County fund" defined.

33-19-8-3. City or town user fee fund established.

33-19-8-4. Appropriations from city or town fund.

33-19-8-5. County user fee fund established.

SECTION.

33-19-8-6. Appropriations from county fund.

33-19-8-7. Pretrial diversion program fund — Appropriation of excess to prosecuting attorney.

33-19-8-8. Jury pay fund — Transfer of jury fees to fund.

33-19-8-1. "City or town fund" defined. — As used in this chapter, "city or town fund" refers to the city or town user fee fund established under section 3 [IC 33-19-8-3] of this chapter. [P.L.305-1987, § 1.]

33-19-8-2. "County fund" defined. — As used in this chapter, "county fund" refers to the county user fee fund established under section 5 [IC 33-19-8-5] of this chapter. [P.L.305-1987, § 1.]

33-19-8-3. City or town user fee fund established. — (a) A city or town user fee fund is established in each city or town having a city or town court for the purpose of supplementing the cost of various program services. The city or town fund shall be administered by the fiscal officer of the city or town.

(b) The city or town fund consists of the following fees collected by a clerk under this article:

- (1) The pretrial diversion program fee.
- (2) The alcohol and drug services fee.
- (3) The law enforcement continuing education program fee.
- (4) The deferral program fee.

[P.L.305-1987, § 1; P.L.288-1989, § 2.]

33-19-8-4. Appropriations from city or town fund. — Upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section (3)(b) [IC 33-19-8-3(b)] of this chapter, the fiscal body of the city or town shall appropriate from the city or town fund to that program the

amount collected for the program fee under IC 33-19-6. [P.L.305-1987, § 1; P.L.40-1988, § 7.]

33-19-8-5. County user fee fund established. — (a) A county user fee fund is established in each county for the purpose of financing various program services. The county fund shall be administered by the county auditor.

(b) The county fund consists of the following fees collected by a clerk under this article, and by the probation department for the juvenile court under IC 31-34-8-8 or IC 31-37-9-9:

- (1) The pretrial diversion program fee.
- (2) The informal adjustment program fee.
- (3) The marijuana eradication program fee.
- (4) The alcohol and drug services program fee.
- (5) The law enforcement continuing education program fee.
- (6) The deferral program fee.
- (7) The jury fee.

(c) All of the jury fee and two dollars (\$2) of every deferral program fee collected under IC 33-19-5-2(e) shall be deposited by the county auditor in the jury pay fund under IC 33-19-10. [P.L.305-1987, § 1; P.L.126-1989, § 25; P.L.288-1989, § 3; P.L.79-1994, § 11; P.L.216-1996, § 7; P.L.1-1997, § 136; P.L.204-1997, § 4; P.L.253-1997(ss), § 29.]

33-19-8-6. Appropriations from county fund. — Upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section 5(b) [IC 33-19-8-5(b)] of this chapter, the county fiscal body shall appropriate from the county fund to that program or fund the amount collected for the program under IC 33-19-6. [P.L.305-1987, § 1; P.L.40-1988, § 8.]

33-19-8-7. Pretrial diversion program fund — Appropriation of excess to prosecuting attorney. — (a) This section applies when a county auditor has established a pretrial diversion program fund to receive funds initially deposited in the county user fee fund from the collection of the pretrial diversion program fee. Whenever a prosecuting attorney:

- (1) Certifies to the county fiscal body that the amount in the pretrial diversion program fund exceeds the amount needed to finance the pretrial diversion program services during the calendar year; and
- (2) States the amount of the excess funds in the certification;

the fiscal body may adopt an ordinance to appropriate the excess funds from the pretrial diversion program fund to the office of the prosecuting attorney.

(b) The funds appropriated under subsection (a) may be used by the office of the prosecuting attorney for any purpose specified in the appropriation ordinance adopted by the fiscal body.

(c) A county fiscal body may not transfer funds previously appropriated to the office of the prosecuting attorney as a result of an appropriation under subsection (a). [P.L.289-1989, § 1; P.L.1-1990, § 326.]

33-19-8-8. Jury pay fund — Transfer of jury fees to fund. — (a) This section applies to jury fees collected under IC 33-19-6-17.

(b) Whenever a clerk certifies to the county fiscal body the amount of fees collected, the county fiscal body shall direct the county auditor to transfer the amount certified to the jury pay fund established by IC 33-19-10. [P.L.204-1997, § 5.]

CHAPTER 9

STATE USER FEE FUND

SECTION.

33-19-9-1. “State fund” defined.

33-19-9-2. Establishment and administration of fund.

33-19-9-3. Transfer to treasurer of fees distributed to auditor.

SECTION.

33-19-9-4. Distribution by treasurer of amounts transferred to state fund.

33-19-9-1. “State fund” defined. — As used in this chapter, “state fund” refers to the state user fee fund established under section 2 [IC 33-19-9-2] of this chapter. [P.L.126-1989, § 26.]

33-19-9-2. Establishment and administration of fund. — The state user fee fund is established. The state fund shall be administered by the treasurer of state. [P.L.126-1989, § 26.]

33-19-9-3. Transfer to treasurer of fees distributed to auditor. — On June 30 and December 31 each year the auditor of state shall transfer to the treasurer of state the fees distributed to the auditor of state under IC 33-19-7-1(b) and IC 33-19-7-4(d). [P.L.126-1989, § 26.]

33-19-9-4. Distribution by treasurer of amounts transferred to state fund. — (a) The treasurer of state shall semiannually distribute one million eighty-seven thousand five hundred dollars (\$1,087,500) of the amounts transferred to the state fund under section 3 [IC 33-19-9-3] of this chapter as follows:

(1) Seventeen and seventy-three hundredths percent (17.73%) shall be deposited into the alcohol and drug countermeasures fund established under IC 9-27-2-11.

(2) Nine and ninety-seven hundredths percent (9.97%) shall be deposited into the drug interdiction fund established under IC 10-1-8-2.

(3) Five and fifty-four hundredths percent (5.54%) shall be deposited into the drug prosecution fund established under IC 33-14-8-5.

(4) Six and sixty-five hundredths percent (6.65%) shall be deposited into the corrections drug abuse fund established under IC 11-8-2-11.

(5) Twenty-six and sixty-hundredths percent (26.60%) shall be deposited into the state drug free communities fund established by IC 5-2-10-2.

(6) Nine and forty-five hundredths percent (9.45%) shall be distributed to the Indiana department of transportation for use under IC 8-23-2-15.

(7) Twenty-four and six-hundredths percent (24.06%) shall be deposited in the family violence and victim assistance fund established by IC 12-18-5-2.

(b) The treasurer of state shall semiannually distribute the amount remaining after the distributions in subsection (a) to the Indiana safe schools fund established by IC 5-2-10.1. [P.L.126-1989, § 26; P.L.12-1990, § 9; P.L.2-1991, § 95; P.L.50-1993, § 7; P.L.4-1994, § 20; P.L.61-1995, § 9.]

CHAPTER 10

JURY PAY FUND

SECTION.

33-19-10-1. "Jury pay fund" defined.

33-19-10-2. Establishment — Purpose —
Source of funds.

SECTION.

33-19-10-3. Appropriation to court to supplement cost of jury fees.

33-19-10-1. "Jury pay fund" defined. — As used in this chapter, "jury pay fund" refers to the jury pay fund established by section 2 [IC 33-19-10-2] of this chapter. [P.L.204-1997, § 6.]

33-19-10-2. Establishment — Purpose — Source of funds. — (a) A jury pay fund is established for each county for the purpose of supplementing the cost of paying jury fees. The jury pay fund shall be administered by the county auditor.

(b) The jury pay fund consists of amounts deposited by the county auditor under IC 33-19-8-5(c) and the fees collected under IC 33-19-6-17 from defendants who committed a crime, violated a statute defining an infraction, or violated an ordinance of a municipal corporation. [P.L.204-1997, § 6.]

33-19-10-3. Appropriation to court to supplement cost of jury fees. — Upon receipt of monthly claims submitted on oath to the county fiscal body by a clerk serving the county, the county fiscal body shall appropriate from the jury pay fund to the court served by the clerk an amount to supplement the cost of jury fees. [P.L.204-1997, § 6.]

ARTICLE 20

INTEREST-BEARING ATTORNEY TRUST ACCOUNTS

CHAPTER.

1. LEGISLATIVE FINDINGS, 33-20-1-1, 33-20-1-2.
2. APPLICATION OF ARTICLE, 33-20-2-1 — 33-20-2-3.
3. DEFINITIONS, 33-20-3-1 — 33-20-3-11.
4. INDIANA ATTORNEY TRUST ACCOUNT BOARD, 33-20-4-1 — 33-20-4-16.
5. PARTICIPATION BY ATTORNEYS, 33-20-5-1 — 33-20-5-8.

CHAPTER.

6. INTEREST-BEARING ATTORNEY TRUST ACCOUNTS, 33-20-6-1 — 33-20-6-12.
7. INDIANA ATTORNEY TRUST ACCOUNT FUND, 33-20-7-1 — 33-20-7-15.
8. BOARD EMPLOYEES, 33-20-8-1 — 33-20-8-3.
9. ANNUAL REPORT, 33-20-9-1, 33-20-9-2.

CHAPTER 1
LEGISLATIVE FINDINGS

SECTION.

33-20-1-1. Legislative findings.

33-20-1-2. Purpose of article.

33-20-1-1. Legislative findings. — The Indiana general assembly finds that:

- (1) Due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons do not adequately meet the needs of indigent persons;
- (2) The use of funds collected pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government; and
- (3) The expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and in the improvement of the administration of justice. [P.L.154-1990, § 15.]

Indiana Law Review. Recent Developments in Professional Responsibility, 24 Ind. L. Rev. 1015 (1991).

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-1-2. Purpose of article. — It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons and to initiate new programs that will provide services to them. [P.L.154-1990, § 15.]

CHAPTER 2
APPLICATION OF ARTICLE

SECTION.

33-20-2-1. No disciplinary action for actions taken in accordance with article.

SECTION.

33-20-2-2. Activities regulated by judicial department.

33-20-2-3. Investment of nonqualified funds.

33-20-2-1. No disciplinary action for actions taken in accordance with article. — An attorney is not subject to disciplinary action as a result of any action taken in accordance with this article. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The immunity provisions of the Attorney Trust Account Act clearly and literally attempt to exercise by limitation the attorney disciplinary function of the judicial department. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and crit-

ical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The present rules and precedent of the Supreme Court prohibit Indiana attorneys from participation in a program whereby interest earned on their clients' funds is redirected for other purposes without the clients' consent. Thus, without the immunity clause, the remaining provisions of the Attorney Trust Account Act can have no practical legal effect. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-2-2. Activities regulated by judicial department. — This article does not apply to an activity that is:

- (1) The practice of law; and
- (2) Regulated by the judicial department of state government. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

The effect of this provision would be to declare that the duties and obligations with respect to client funds held by an attorney are matters outside the practice of law and not

subject to regulation by the Supreme Court. This result is contrary to both existing standards and past enforcement. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-2-3. Investment of nonqualified funds. — This article does not apply to the investment of nonqualified funds by an attorney:

- (1) In any other investment specified by a client or beneficial owner; or
- (2) As agreed to by the client, beneficial owner, or attorney. [P.L.154-1990, § 15.]

CHAPTER 3

DEFINITIONS

SECTION.

- 33-20-3-1. Applicability of definitions.
- 33-20-3-2. Attorney.
- 33-20-3-3. Board.
- 33-20-3-4. Depository financial institution.
- 33-20-3-5. Eligible client.
- 33-20-3-6. Fee generating case.

SECTION.

- 33-20-3-7. Fund.
- 33-20-3-8. Interest-bearing attorney trust account.
- 33-20-3-9. Legal assistance.
- 33-20-3-10. Qualified funds.
- 33-20-3-11. Qualified legal services provider.

33-20-3-1. Applicability of definitions. — The definitions in this chapter apply throughout this article. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-3-2. Attorney. — “Attorney” means an individual in good standing admitted to the practice of law in Indiana. The term includes a professional corporation (as defined in IC 23-1.5-1-10) formed by one (1) or more attorneys. [P.L.154-1990, § 15.]

33-20-3-3. Board. — “Board” refers to the Indiana attorney trust account board established under IC 33-20-4-1. [P.L.154-1990, § 15.]

33-20-3-4. Depository financial institution. — “Depository financial institution” means a bank, a bank or trust company, a credit union, an industrial loan and investment company, a savings bank, or a savings association, whether chartered, incorporated, licensed, or organized under Indiana law or the law of the United States that:

- (1) does business in Indiana; and
- (2) is insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund, the National Credit Union Administration, or an alternate share insurer. [P.L.154-1990, § 15; P.L.79-1998, § 102.]

33-20-3-5. Eligible client. — “Eligible client” means a person:

- (1) Who resides in Indiana; and
- (2) Whose income:
 - (A) Satisfies the eligibility standards established by a legal aid program or legal services program existing in Indiana on January 1, 1990, if the program’s client eligibility standards provide that the client’s income may not exceed one hundred fifty percent (150%) of the current poverty threshold established by the United States Office of Management and Budget;
 - (B) Is not more than one hundred fifty percent (150%) of the current poverty threshold established by the United States Office of Management and Budget; or
 - (C) Satisfies the eligibility standard for Supplemental Security Income or free services under the Older Americans Act of 1965, as amended (42 U.S.C. 3001-3057) or Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6000-6083). [P.L.154-1990, § 15.]

33-20-3-6. Fee generating case. — “Fee generating case” means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably would be expected to result in

payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case is not considered a fee generating case if adequate representation is unavailable and if any of the following circumstances exist concerning the case:

(1) The qualified legal services provider that represents the indigent in the case has determined in good faith that free referral is not possible for any of the following reasons:

(A) The case has been rejected by the lawyer referral service serving the county of the eligible client's residence, or if there is no such service, by two (2) attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the lawyer referral service described in clause (A), if one exists, nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of a type that attorneys in private practice ordinarily do not accept or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the eligible client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a qualified legal services provider or its employee to represent the indigent in the case pursuant to a statute, a court rule, or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement is based on need. [P.L.154-1990, § 15.]

33-20-3-7. Fund. — “Fund” refers to the Indiana attorney trust account fund established under IC 33-20-7-1. [P.L.154-1990, § 15.]

33-20-3-8. Interest-bearing attorney trust account. — “Interest-bearing attorney trust account” means an account with a depository financial institution that is:

(1) Unsegregated;

(2) Interest-bearing;

(3) For the deposit of qualified funds by an attorney; and

(4) Capable of being drawn upon by the depositor in the same manner as a checking account that is not interest-bearing. [P.L.154-1990, § 15.]

33-20-3-9. Legal assistance. — (a) “Legal assistance” means direct representation by an attorney of an eligible client in a civil matter pending in Indiana, including counsel, litigation, research, coordination with pro

bono programs, support services, substantive and procedural training for attorneys and paralegals in poverty law subjects, and any other activity necessary to ensure the effective delivery of quality legal services in a civil matter.

(b) Legal assistance does not include representation of an eligible client in:

- (1) Criminal matters; or
- (2) A fee generating case.

[P.L.154-1990, § 15.]

33-20-3-10. Qualified funds. — “Qualified funds” means money received by an attorney from a client or beneficial owner in a fiduciary capacity that, in the good faith judgment of the attorney, is:

- (1) Of such an amount; or
- (2) Reasonably expected to be held for such a short term;

that sufficient interest income will not be generated to justify the expense of administering a segregated account. [P.L.154-1990, § 15.]

33-20-3-11. Qualified legal services provider. — “Qualified legal services provider” means a not-for-profit organization organized in Indiana and operating exclusively in Indiana which, as its primary purpose and function, provides legal assistance without charge to eligible clients in civil matters only. [P.L.154-1990, § 15.]

CHAPTER 4

INDIANA ATTORNEY TRUST ACCOUNT BOARD

SECTION.

- 33-20-4-1. Establishment of board.
- 33-20-4-2. Number of members.
- 33-20-4-3. Appointment of members by chief justice.
- 33-20-4-4. Appointment of other members.
- 33-20-4-5. Factors considered by chief justice in appointing members.
- 33-20-4-6. Political affiliation of members.
- 33-20-4-7. Term of office.
- 33-20-4-8. Vacancies.

SECTION.

- 33-20-4-9. Appointment of chairman.
- 33-20-4-10. Term of office of chairman.
- 33-20-4-11. Compensation of members who are not state employees.
- 33-20-4-12. Compensation of state employee members.
- 33-20-4-13. Administration of fund.
- 33-20-4-14. Powers in regard to property.
- 33-20-4-15. Adoption of rules.
- 33-20-4-16. Development of programs.

33-20-4-1. Establishment of board. — The Indiana attorney trust account board is established. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-4-2. Number of members. — The board consists of eleven (11) members. [P.L.154-1990, § 15.]

33-20-4-3. Appointment of members by chief justice. — The chief justice of the Indiana supreme court shall appoint six (6) members of the board. [P.L.154-1990, § 15.]

33-20-4-4. Appointment of other members. — The following officials shall each appoint one (1) member of the board:

(1) The governor.

(2) The speaker of the house of representatives; however, if there are an equal number of members of the house of representatives from each major political party, then the other speaker of the house of representatives shall make an appointment which would be otherwise reserved for the minority leader.

(3) The minority leader of the house of representatives.

(4) The president pro tempore of the senate.

(5) The minority floor leader of the senate.

[P.L.154-1990, § 15.]

33-20-4-5. Factors considered by chief justice in appointing members. — The chief justice shall consider the following factors as favorable in appointing a member under section 3 [IC 33-20-4-3] of this chapter:

(1) Whether the individual is a dean of an Indiana law school.

(2) Whether the individual is a director or board member of an Indiana legal services or legal aid program.

(3) Whether the individual is a member of the Indiana State Bar Association.

(4) Whether the appointment of the individual would result in representation on the board from the First District, Second District, and Third District of the court of appeals.

(5) Whether the individual is a representative of a depository financial institution.

(6) Whether the individual is an eligible client.

[P.L.154-1990, § 15.]

33-20-4-6. Political affiliation of members. — Not more than four (4) of the members appointed by the chief justice may be members of the same political party. [P.L.154-1990, § 15.]

33-20-4-7. Term of office. — A member of the board serves a term of four (4) years. [P.L.154-1990, § 15.]

33-20-4-8. Vacancies. — The appointing authority shall fill a vacancy on the board. [P.L.154-1990, § 15.]

33-20-4-9. Appointment of chairman. — The chief justice shall appoint a member of the board to serve as chairman not later than December 1 of each year. [P.L.154-1990, § 15.]

33-20-4-10. Term of office of chairman. — The term of a chairman of the board begins January 1 following the chairman's appointment under section 9 [IC 33-20-4-9] of this chapter. [P.L.154-1990, § 15.]

33-20-4-11. Compensation of members who are not state employees. — A member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided by the state travel policies and procedures established by the department of administration and approved by the budget agency. [P.L.154-1990, § 15.]

33-20-4-12. Compensation of state employee members. — A member of the board who is a state employee is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided by the state travel policies and procedures established by the department of administration and approved by the budget agency. [P.L.154-1990, § 15.]

33-20-4-13. Administration of fund. — The board shall administer the fund in accordance with IC 33-20-7. [P.L.154-1990, § 15.]

33-20-4-14. Powers in regard to property. — The board may receive, hold, and manage property. [P.L.154-1990, § 15.]

33-20-4-15. Adoption of rules. — The board may adopt rules under IC 4-22-2 to implement this article. [P.L.154-1990, § 15.]

33-20-4-16. Development of programs. — The board shall develop programs to:

- (1) Educate attorneys and depository financial institutions concerning this article; and
- (2) Encourage attorneys to create and maintain interest-bearing attorney trust accounts. [P.L.154-1990, § 15.]

CHAPTER 5

PARTICIPATION BY ATTORNEYS

SECTION.

- 33-20-5-1. Attorneys subject to article.
 33-20-5-2. Attorneys not subject to article.
 33-20-5-3. Contents of statement submitted by attorney under IC 33-20-5-2.
 33-20-5-4. Presumption that attorney subject to article.
 33-20-5-5. Placement of qualified funds in account.

SECTION.

- 33-20-5-6. Determination whether money constitutes qualified funds.
 33-20-5-7. Factors considered in determination under IC 30-20-5-6.
 33-20-5-8. Immunity of attorney acting with good faith judgment.

33-20-5-1. Attorneys subject to article. — Except as provided in section 2 [IC 33-20-5-2] of this chapter, each attorney is subject to this article after December 31, 1990. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-5-2. Attorneys not subject to article. — An attorney is not subject to this article if the attorney:

(1) Does not place any qualified funds in an interest-bearing attorney trust account; and

(2) Submits a written statement to the board.

[P.L.154-1990, § 15.]

33-20-5-3. Contents of statement submitted by attorney under IC 33-20-5-2. — The statement submitted under section 2 [IC 33-20-5-2] of this chapter must:

(1) Be filed in accordance with rules adopted under IC 4-22-2 by the board; and

(2) State that the attorney is acting under section 2 of this chapter to exempt the attorney from the application of this article. [P.L.154-1990, § 15.]

33-20-5-4. Presumption that attorney subject to article. — If an attorney does not act under section 2 [IC 33-20-5-2] of this chapter, the board shall presume that the attorney has elected to be subject to this article. [P.L.154-1990, § 15.]

33-20-5-5. Placement of qualified funds in account. — An attorney subject to this article shall place all qualified funds in an interest-bearing attorney trust account. [P.L.154-1990, § 15.]

33-20-5-6. Determination whether money constitutes qualified funds. — An attorney subject to this article shall determine if money received from a client or beneficial owner constitutes qualified funds. [P.L.154-1990, § 15.]

33-20-5-7. Factors considered in determination under IC 30-20-5-6. — In making the determination under section 6 [IC 33-20-5-6] of this chapter, the attorney shall consider the following:

(1) The amount of interest the money would earn during the period the money is expected to be deposited.

(2) The cost of establishing and administering the account.

(3) The capability of the depository financial institution to calculate and pay the interest earned by each client's funds, after deduction of any service charges, to the client. [P.L.154-1990, § 15.]

33-20-5-8. Immunity of attorney acting with good faith judgment.

— An attorney:

- (1) Does not breach a fiduciary duty;
- (2) Is not liable in damages; and
- (3) Is not subject to disciplinary action;

because of a deposit of money in an interest-bearing attorney trust account if the attorney acted in accordance with a good faith judgment that the money constituted qualified funds. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The immunity provisions of the Attorney Trust Account Act clearly and literally at-

tempt to exercise by limitation the attorney disciplinary function of the judicial department. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

The present rules and precedent of the Supreme Court prohibit Indiana attorneys from participation in a program whereby interest earned on their clients' funds is redirected for other purposes without the clients' consent. Thus, without the immunity clause, the remaining provisions of the Attorney Trust Account Act can have no practical legal effect. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

CHAPTER 6

INTEREST-BEARING ATTORNEY TRUST ACCOUNTS

SECTION.

- 33-20-6-1. Agreement between depositor and depository financial institution.
- 33-20-6-2. Terms and conditions.
- 33-20-6-3. Ownership of beneficial interest in accrued interest.
- 33-20-6-4. Remittance of earned interest to board.
- 33-20-6-5. Time of remittance.
- 33-20-6-6. Transmittal of statement upon remittance of interest.
- 33-20-6-7. Contents of statement described in IC 33-20-6-6.

SECTION.

- 33-20-6-8. No duty of institution to determine whether deposit includes qualified funds.
- 33-20-6-9. Discharge of claim against depository financial institution for remittance of interest.
- 33-20-6-10. Actions not allowed against depository financial institutions.
- 33-20-6-11. Confidentiality of information.
- 33-20-6-12. Limitations on disclosure of information.

33-20-6-1. Agreement between depositor and depository financial institution. — If the depositor and depository financial institution agree, a trust account that contains qualified funds held by an attorney subject to this article may be made an interest-bearing attorney trust account. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-6-2. Terms and conditions. — The terms and conditions of an interest-bearing attorney trust account, except as required under this chapter, shall be determined by the depositor and the depository financial institution. A depository financial institution is not required to offer an interest-bearing attorney trust account. [P.L.154-1990, § 15.]

33-20-6-3. Ownership of beneficial interest in accrued interest. — The board owns the beneficial interest in the interest accrued by an interest-bearing attorney trust account of an attorney who is subject to this article. [P.L.154-1990, § 15.]

33-20-6-4. Remittance of earned interest to board. — Except for amounts deducted pursuant to terms or conditions agreed upon under section 2 [IC 33-20-6-2] of this chapter, a depository financial institution shall remit any interest earned on an interest-bearing attorney trust account to the board. [P.L.154-1990, § 15.]

33-20-6-5. Time of remittance. — A depository financial institution shall make the remittance required under section 4 [IC 33-20-6-4] of this chapter not less frequently than quarterly and not later than fifteen (15) days after the end of the remittance period. [P.L.154-1990, § 15.]

33-20-6-6. Transmittal of statement upon remittance of interest. — A depository financial institution shall transmit a statement to:

- (1) The board; and
- (2) The attorney who maintains the interest-bearing attorney trust account;

when the depository financial institution remits interest under section 4 [IC 33-20-6-4] of this chapter. [P.L.154-1990, § 15.]

33-20-6-7. Contents of statement described in IC 33-20-6-6. — The statement described in section 6 [IC 33-20-6-6] of this chapter must contain the following information:

- (1) The name of the account.
- (2) The amount of interest remitted from the account.

[P.L.154-1990, § 15.]

33-20-6-8. No duty of institution to determine whether deposit includes qualified funds. — A depository financial institution does not

have the duty to determine or inquire whether a deposit includes qualified funds. [P.L.154-1990, § 15.]

33-20-6-9. Discharge of claim against depository financial institution for remittance of interest. — The remittance of interest by a depository financial institution to the board from an interest-bearing attorney trust account is a valid and sufficient release and discharge of a claim by an entity against the depository financial institution for the remittance. [P.L.154-1990, § 15.]

33-20-6-10. Actions not allowed against depository financial institutions. — An entity may not maintain an action against a depository financial institution solely for:

- (1) Offering, opening, or maintaining an interest-bearing attorney trust account;
- (2) Accepting funds for deposit in an interest-bearing attorney trust account; or
- (3) Remitting interest to the board.

[P.L.154-1990, § 15.]

33-20-6-11. Confidentiality of information. — A paper, a record, a document, or other information identifying an attorney, a client, or a beneficial owner of an interest-bearing attorney trust account is confidential. [P.L.154-1990, § 15.]

33-20-6-12. Limitations on disclosure of information. — The board or a depository financial institution shall not disclose information described by section 11 [IC 33-20-6-11] of this chapter except:

- (1) With the consent of the attorney maintaining the account; or
- (2) As permitted by:
 - (A) Law; or
 - (B) Rule adopted by the judicial department of state government.

[P.L.154-1990, § 15.]

CHAPTER 7

INDIANA ATTORNEY TRUST ACCOUNT FUND

SECTION.

- 33-20-7-1. Establishment of fund.
- 33-20-7-2. Administration of fund.
- 33-20-7-3. Deposit of interest into fund.
- 33-20-7-4. Public funds.
- 33-20-7-5. Investment of money — Deposit of accrued interest.
- 33-20-7-6. Reversion of money to state general fund.
- 33-20-7-7. Interest free income.
- 33-20-7-8. Purposes for which money may be disbursed.

SECTION.

- 33-20-7-9. Amounts disbursed.
- 33-20-7-10. Entity eligibility to receive funds.
- 33-20-7-11. Entity eligibility to receive funds to provide legal assistance.
- 33-20-7-12. Contracts and award of grants.
- 33-20-7-13. Considerations in making disbursements.
- 33-20-7-14. Limitation on administrative costs.
- 33-20-7-15. Audits.

33-20-7-1. Establishment of fund. — The Indiana attorney trust account fund is established as a trust fund to be used solely as provided under this article. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-7-2. Administration of fund. — The fund shall be administered by the board in accordance with rules adopted under IC 4-22-2 by the board. [P.L.154-1990, § 15.]

33-20-7-3. Deposit of interest into fund. — The board shall deposit the interest remitted under IC 33-20-6-4 into the fund. [P.L.154-1990, § 15.]

33-20-7-4. Public funds. — The money in the fund consists of public funds. [P.L.154-1990, § 15.]

33-20-7-5. Investment of money — Deposit of accrued interest. — The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. [P.L.154-1990, § 15.]

33-20-7-6. Reversion of money to state general fund. — Money in the fund at the end of a state fiscal year does not revert to the state general fund. [P.L.154-1990, § 15.]

33-20-7-7. Interest free income. — For purposes of Indiana law, income received by the board from the remittance of interest is not taxable to:

- (1) The attorney maintaining the interest-bearing attorney trust account; or
- (2) The client whose funds are deposited in the interest-bearing attorney trust account. [P.L.154-1990, § 15.]

33-20-7-8. Purposes for which money may be disbursed. — The board may not disburse money in the fund except for:

- (1) The delivery of civil legal assistance to eligible clients;
- (2) Programs or projects in the public interest that assist in the improvement of the administration of justice; and
- (3) Administrative costs.

[P.L.154-1990, § 15.]

33-20-7-9. Amounts disbursed. — During each year the board shall disburse money from the fund for the payment of administrative costs to the extent permitted under section 14 [IC 33-20-7-14] of this chapter. After the payment of administrative costs, any money disbursed by the board from the fund during that year shall be disbursed as follows:

(1) Ninety percent (90%) of the funds shall be disbursed to provide legal assistance to eligible clients by:

(A) qualified legal services providers; or

(B) law school clinics in Indiana that provide free civil legal assistance to eligible clients.

(2) Ten percent (10%) of the funds shall be disbursed for programs or projects in the public interest that assist in the improvement of the administration of justice, including the following:

(A) Guardian ad litem and court appointed special advocate programs that provide guardians ad litem or court appointed special advocates for appointment by the court:

(i) under IC 31-17-2-12 to conduct an investigation and prepare a report in a custody proceeding; or

(ii) under IC 31-33-15-1, IC 31-34-10, or IC 31-40.

(B) Lawyer referral services in Indiana that provide:

(i) a referral to an attorney in private practice without a charge for the referral; and

(ii) an initial consultation with an attorney in private practice without a charge for the consultation;

in a fee generating case.

[P.L.154-1990, § 15; P.L.1-1991, § 186; P.L.1-1997, § 137.]

33-20-7-10. Entity eligibility to receive funds. — An entity that receives funds disbursed under section 9(1) [IC 33-20-7-9(1)] of this chapter during a year is not eligible to receive funds disbursed under section 9(2) [IC 33-20-7-9(2)] of this chapter during that year. [P.L.154-1990, § 15.]

33-20-7-11. Entity eligibility to receive funds to provide legal assistance. — An entity that receives funds disbursed under section 9(2) [IC 33-20-7-9(2)] of this chapter during a year is not eligible to receive funds disbursed under section 9(1) [IC 33-20-7-9(1)] of this chapter during that year. [P.L.154-1990, § 15.]

33-20-7-12. Contracts and award of grants. — The board shall periodically:

(1) Enter into contracts with; and

(2) Award grants to:

qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice to carry out the purpose of the fund. [P.L.154-1990, § 15.]

33-20-7-13. Considerations in making disbursements. — In making disbursements from the fund under section 9(1) [IC 33-20-7-9(1)] of this

chapter, the board shall primarily consider the geographic distribution by county of persons with incomes of not more than the current poverty threshold established by the United States Office of Management and Budget, as indicated in the most current report published by the Bureau of the Census. However, the board may use other considerations in making disbursements from the fund when demonstrable legal needs are documented by a qualified legal services provider. [P.L.154-1990, § 15.]

33-20-7-14. Limitation on administrative costs. — After July 1, 1993, total administrative costs, including payments to board members under IC 33-20-4-11 and IC 33-20-4-12, costs for employees under IC 33-20-8, and all other costs of managing and administering the fund and otherwise performing all responsibilities of the board, may not exceed fifteen percent (15%) of the amounts received into the fund from interest-bearing attorney trust accounts. [P.L.154-1990, § 15.]

33-20-7-15. Audits. — The state board of accounts shall conduct an audit of the fund at least one (1) time during each year to ensure that the fund is administered as required by this chapter. The state board of accounts may conduct audits of qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice as the state board of accounts considers necessary to ensure that the money distributed to qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice is being used as required by this article. [P.L.154-1990, § 15.]

CHAPTER 8

BOARD EMPLOYEES

SECTION.

33-20-8-1. Appointment of executive director.
33-20-8-2. Powers of executive director.

SECTION.

33-20-8-3. Terms of employment.

33-20-8-1. Appointment of executive director. — The board may appoint an executive director to carry out this article. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-8-2. Powers of executive director. — The executive director may:

- (1) Employ persons; or
 - (2) Contract for services;
- upon approval by the board. [P.L.154-1990, § 15.]

33-20-8-3. Terms of employment. — An employee of the board serves at the pleasure of the board. [P.L.154-1990, § 15.]

CHAPTER 9

ANNUAL REPORT

SECTION.

33-20-9-1. Filing.

33-20-9-2. Contents.

33-20-9-1. Filing. — The board shall file a report with:

- (1) The governor;
- (2) The legislative council; and
- (3) The chief justice of the supreme court;

before December 31 of each year. [P.L.154-1990, § 15.]

NOTES TO DECISIONS

Constitutionality.

By declaring an absolute immunity from the disciplinary rules and procedures adopted by the judicial department, the Attorney Trust Account Act (IC 33-20) clearly oversteps the boundary set by Article 3, Section 1, of the Constitution of Indiana. In re Pub. Law No.

154-1990, 561 N.E.2d 791 (Ind. 1990).

The statutory immunity is central and critical to the entire Attorney Trust Account Act and cannot be severed from the rest of the statute. In re Pub. Law No. 154-1990, 561 N.E.2d 791 (Ind. 1990).

33-20-9-2. Contents. — The report filed under section 1 [IC 33-20-9-1] of this chapter must include the following information for the annual period ending June 30:

- (1) The number of eligible clients served.
- (2) The amount of interest paid into the fund by the board during the year as remittances by depository financial institutions and the amount of interest deposited in the fund during the year from investments by the treasurer of state.
- (3) The amount disbursed, by category, for direct legal services, to law school clinics, to programs or projects in the public interest that assist in the improvement of the administration of justice, administrative costs, and for educational purposes.
- (4) The number of attorneys subject to this article.
- (5) The number of attorneys submitting written statements under IC 33-20-5-2.
- (6) The identity of qualified legal services providers, law school clinics, and programs or projects in the public interest that assist in the improvement of the administration of justice to whom grants have been made or with whom contracts have been executed and the amounts disbursed to each. [P.L.154-1990, § 15.]

ARTICLE 21

ATTORNEYS AND THE PRACTICE OF LAW

CHAPTER.

1. PRACTICE OF LAW BY ATTORNEYS, 33-21-1-1
— 33-21-1-10.
2. PROHIBITION ON PRACTICING LAW BY
NONATTORNEYS, 33-21-2-1.

CHAPTER.

3. PROHIBITION ON SOLICITATION BY
NONATTORNEYS, 33-21-3-1.

CHAPTER 1

PRACTICE OF LAW BY ATTORNEYS

SECTION.

- 33-21-1-1. Oath required.
- 33-21-1-2. Clerk to furnish court with list of attorneys.
- 33-21-1-3. Duties of attorney.
- 33-21-1-4. Authority to bind client — Authority to receive money claimed by client.
- 33-21-1-5. Written authority required for entry of certain judgments.
- 33-21-1-6. Requirement to produce authority.

SECTION.

- 33-21-1-7. Appearance for party without authority.
- 33-21-1-8. Deceit or collusion with intent to deceive a court or judge or party — Penalties.
- 33-21-1-9. Refusal to deliver money or papers.
- 33-21-1-10. Suspension of attorney for cases under IC 33-21-1-9.

33-21-1-1. Oath required. — Every person, before proceeding to discharge the duties of an attorney, shall take an oath to support the Constitution of the United States and of this state, and that he will faithfully and honestly discharge the duties of an attorney-at-law; which oath shall be entered in the order-book of the court. [P.L.1-1998, § 60.]

NOTES TO DECISIONS

Accounting for Moneys Collected.

In addition to the moral responsibility of an attorney to faithfully account for and pay over moneys coming into his hands, as imposed by

statute, the legal profession itself recognized this duty of the attorney's trust as one of the most significant. *Baker v. Keisker*, 236 Ind. 617, 142 N.E.2d 432 (1957).

33-21-1-2. Clerk to furnish court with list of attorneys. — At each term of the court, the clerk shall furnish the court with a list of the names of all the attorneys having business in such court. [P.L.1-1998, § 60.]

33-21-1-3. Duties of attorney. — It shall be the duty of an attorney:

- (1) To support the Constitution and laws of the United States and of this state.
- (2) To maintain the respect that is due to the courts of justice and judicial officers.
- (3) To counsel or maintain such actions, proceedings or defenses only as appear to him legal and just; but this section shall not be construed to prevent the defense of a person charged with crime, in any case.
- (4) To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law.

- (5) To maintain inviolate the confidence, and, at every peril to himself, to preserve the secrets of his client.
- (6) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.
- (7) Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest.
- (8) Never to reject, from any consideration personal to himself, the cause of the defenseless or oppressed.
- (9) To promptly account to and pay over to a client any moneys coming into the hands of the attorney and to which the client is lawfully entitled.
- (10) To abstain from direct or indirect solicitation of employment to institute, prosecute, or defend against any claim, action or cause of action. [P.L.1-1998, § 60.]

Compiler's Notes. This section may be affected by the adoption by the Supreme Court of Indiana of the Rules of Professional Conduct.

Indiana Law Review. Privileged Communications: The Federal Rules of Evidence and Indiana Law; Who's Got a Secret?, 9 Ind. L. Rev. 645.

NOTES TO DECISIONS

ANALYSIS

Acceptance of judicial office.
 Accounting for moneys collected.
 Affidavits and bonds.
 Attitude toward court.
 Champerty.
 Cause of the defenseless and oppressed.
 Default.
 Defense of persons accused of crime.
 Duties toward clients.
 Fraud and deceit.
 Knowledge of laws and practice.
 Liability for costs.
 Liability for money collected.
 Liability for property acquired.
 Liability for want of skill or care.
 Poor persons.
 Privileged communications.
 —Communications not subject to privilege.
 —Matters of public record.
 —Consent to disclosure.
 Representation of facts.
 Right to represent.

Acceptance of Judicial Office.

An acceptance by an attorney of a judicial office prevented him from practicing law or having any interest in such business. *Justice v. Lairy*, 19 Ind. App. 272, 49 N.E. 459, 65 Am. St. R. 405 (1898).

Accounting for Moneys Collected.

In addition to the moral responsibility of an attorney to faithfully account for and pay over moneys coming into his hands, as imposed by

statute, the legal profession itself recognized this duty of the attorney's trust as one of the most significant. *Baker v. Keisker*, 236 Ind. 617, 142 N.E.2d 432 (1957).

Affidavits and Bonds.

Attorneys were under no legal obligations to make affidavits or to execute bonds for their clients. *Foulks v. Falls*, 91 Ind. 315 (1883).

Attitude Toward Court.

It was the duty of an attorney to refrain from abusive language and to maintain a respectful bearing towards the court. *Redman v. State*, 28 Ind. 205 (1867).

Attorneys should maintain a respectful bearing toward the court, and refrain from abusive language, and courts had power to enforce such conduct. *Dodge v. State*, 140 Ind. 284, 39 N.E. 745 (1895).

Attorneys were officers of the courts and should uphold their dignity and usefulness. *Pittsburgh, C., C. & St. L. Ry. v. Muncie & Portland Traction Co.*, 166 Ind. 466, 77 N.E. 941 (1906).

Champerty.

An agreement by which an attorney was to receive for his services in recovering a claim, a part of the claim or thing recovered was champertous. *Scobey v. Ross*, 13 Ind. 117 (1859).

Cause of the Defenseless and Oppressed.

Within the framework of clause eight of this

Cause of the Defenseless and Oppressed. (Cont'd)

section an attorney appointed by the court as counsel for one admitted to prosecute a civil action as a poor person was not entitled to any compensation for his services, and an order of court making an allowance was not authorized by law. *Board of County Comm'rs v. Pollard*, 153 Ind. 371, 55 N.E. 87 (1899).

Default.

In an action instituted in the Supreme Court by the attorney-general of the state to disbar defendant on the ground that he had counseled and maintained unlawful unjust actions, had solicited employment, and had failed to account for and pay over money to clients, wherein, after issues were found against defendant on a challenge to the jurisdiction of the court, he was ordered to answer the charges filed, but defaulted and thereafter filed his resignation, such default was an admission of the material allegations, which were sufficient to warrant disbarment, and the consequences of the default attached before defendant resigned. *Beamer v. Waddell*, 221 Ind. 279, 47 N.E.2d 608 (1943).

Defense of Persons Accused of Crime.

The question of whether a motion for new trial should have been filed in a criminal case was one appealing to the judgment of defendant's attorney. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

The question of how often an attorney should visit his client accused of crime or how many times they should consult prior to trial were matters wholly for the attorney and the client to determine. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

Proof of good moral character was proper for accused to present in his defense, and the question of whether it should have been presented was a matter for him and his attorney to determine before trial, and the fact that such evidence was not presented did not necessarily raise an inference that his attorney did not properly represent him, or that he made only a perfunctory defense for him. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

An attorney could not be negligent in waiving a formal arraignment and entering a plea of not guilty, since such plea properly protected his client's then existing rights. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

Whether a plea in abatement, or a motion to quash should have been filed were questions for accused's attorney to determine, and the Supreme Court, on appeal from an order denying a petition for writ of error coram nobis, could not say that the attorney was negligent in not determining either question

in the affirmative. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

Duties Toward Clients.

If a client did not see fit to follow the advice of his attorney, the attorney should have obeyed the instructions of the client. *Nave v. Baird*, 12 Ind. 318 (1859).

An attorney, in dealing with his client, must have acted with the most scrupulous good faith and honesty. *Judah v. Trustees of Vincennes Univ.*, 23 Ind. 272 (1864).

An attorney for an automobile liability insurer who, pursuant to the terms of a liability policy, appeared as attorney for the insured in a damage action against the insured, upon discovery that the insured had apparently breached the requirements of the policy for full cooperation with insurer by giving to the insurer false statements concerning the accident in question, should have withdrawn his appearance because of the conflict of interest between the insurer and the insured and his subsequent taking of a sworn statement from the insured and using it against the insured in an action by the insurer to be relieved from defending the insurer in that damage action appeared to contravene his duty as an attorney, "at every peril to himself, to preserve the secrets of his client." *State Farm Mut. Auto. Ins. Co. v. Walker*, 11 Ind. Dec. 13, 382 F.2d 548 (7th Cir. 1967), cert. denied, 389 U.S. 1045, 88 S. Ct. 789, 19 L. Ed. 2d 837 (1968).

Attorneys could not use information obtained by virtue of their employment for their own gain to the detriment of their clients. *Downard v. Hadley*, 116 Ind. 131, 18 N.E. 457 (1888).

An attorney had to act with the most scrupulous good faith towards his clients. *Moorman v. Wood*, 117 Ind. 144, 19 N.E. 739 (1889); *Hughes v. Willson*, 128 Ind. 491, 26 N.E. 50 (1890).

Attorneys should not have made settlements with, nor knowingly permitted their clients to settle controversies with adverse parties in the absence of the counsel for such parties. *Miedreich v. Rank*, 40 Ind. App. 393, 82 N.E. 117 (1907).

Fraud and Deceit.

If an attorney misled his client by the fraudulent concealment of material matters or by false statements, the transaction would have been annulled by the courts. *McLead v. Applegate*, 127 Ind. 349, 26 N.E. 830 (1891); *Manley v. Felty*, 146 Ind. 194, 45 N.E. 74 (1896).

Where an attorney, in order to obtain admission to practice law in this state, practiced fraud and deceit upon the state board of law examiners and the Supreme Court, by falsely stating that he had never been a party to any legal action, or otherwise involved in any

Fraud and Deceit. (Cont'd)

legal proceedings, when he had been involved in legal proceedings in which his moral character was brought in question, and continued to practice deceit after his admission to the bar, he was properly disbarred from practicing law in the courts of this state. *State ex rel. Indianapolis Bar Ass'n v. Hartman*, 216 Ind. 89, 23 N.E.2d 477 (1939).

In a criminal proceeding wherein a temporary writ of prohibition was secured from the Supreme Court based on representations contained in petition on which the name of counsel appeared and subsequent events proved that certain representations were false the temporary writ was secured by fraud on the court and temporary writ would be vacated. *Trigg v. Criminal Court*, 234 Ind. 609, 130 N.E.2d 461 (1955).

Attorney for partnership was not guilty of fraud, where he had knowledge that managing partner intended to terminate management contract with one of the other partners, and attorney remained silent. *Rice v. Strunk*, 670 N.E.2d 1280 (Ind. 1996).

Knowledge of Laws and Practice.

Attorneys should have been acquainted with the settled rules of law and practice in the courts where they practiced. *Hillegass v. Bender*, 78 Ind. 225 (1881).

Liability for Costs.

An attorney could, in certain cases, have been taxed with the costs of a cause. *Loveland v. Jones*, 4 Ind. 184 (1853); *Brown v. Brown*, 4 Ind. 627, 58 Am. Dec. 641 (1853).

Liability for Money Collected.

In actions against attorneys for money collected and not paid over to the clients a demand must have been averred and proven. *Black v. Hersch*, 18 Ind. 342, 81 Am. Dec. 362 (1862); *Pierse v. Thornton*, 44 Ind. 235 (1873); *Heddens v. Younglove, Massey & Co.*, 46 Ind. 212 (1874), overruled on other grounds, 142 Ind. 367, 41 N.E. 815 (1895).

The discharge in bankruptcy of an attorney did not release him from liability for money collected. *Heffren v. Jayne*, 39 Ind. 463, 13 Am. R. 281 (1872).

An attorney was not liable in an action for money collected until after a demand. *Claypool v. Gish*, 108 Ind. 424, 9 N.E. 382 (1886); *Whinery v. Brown*, 36 Ind. App. 276, 75 N.E. 605 (1905).

Deposit by attorney of money of his client in his own name in bank rendered him liable for its loss. *Naltner v. Dolan*, 108 Ind. 500, 8 N.E. 289, 58 Am. R. 61 (1886).

Actions against attorneys to recover money collected were governed by the six-year statute of limitations. *Sheaf v. Dodge*, 161 Ind. 270, 68 N.E. 292 (1903).

It was the duty of attorney who had collected money for his client to give the latter notice of such fact within a reasonable time. *Spencer v. Smith*, 45 Ind. App. 17, 87 N.E. 154 (1909).

Liability for Property Acquired.

Where attorney acquired title to property in litigation he was chargeable to his client as a trustee and had to account for all profits. *Hughes v. Willson*, 128 Ind. 491, 26 N.E. 50 (1890).

Liability for Want of Skill or Care.

An attorney was liable to his client for the consequences of his ignorance, carelessness or unskillfulness. *Reilly v. Cavanaugh*, 29 Ind. 435 (1868); *Walpole's Adm'r v. Carlisle*, 32 Ind. 415 (1869); *Skillen v. Wallace*, 36 Ind. 319 (1871); *Jones v. White*, 90 Ind. 255 (1883); *Moorman v. Wood*, 117 Ind. 144, 19 N.E. 739 (1889); *Citizens Loan Fund & Sav. Ass'n v. Friedley*, 123 Ind. 143, 23 N.E. 1075, 7 L.R.A. 669, 18 Am. St. R. 320 (1890); *Kepler v. Jessup*, 11 Ind. App. 241, 37 N.E. 655, 38 N.E. 826 (1894).

The giving of an erroneous opinion in a case where well-informed lawyers might differ would not render an attorney liable for damages. *Citizens Loan Fund & Sav. Ass'n v. Friedley*, 123 Ind. 143, 23 N.E. 1075, 7 L.R.A. 669, 18 Am. St. R. 320 (1890).

Damages on account of negligence could be pleaded as counter claim in an action by an attorney for fees. *O'Halloran v. Marshall*, 8 Ind. App. 394, 35 N.E. 926 (1893).

Attorneys were not warrantors of the correctness of their opinions. *Kepler v. Jessup*, 11 Ind. App. 241, 37 N.E. 655, 38 N.E. 826 (1894).

The appointment of an incompetent attorney, and his failure to render any actual service to his client, fell far short of constitutional requirement that the defendant had a right to be heard by himself and counsel. *Hillman v. State*, 234 Ind. 27, 123 N.E.2d 180 (1954).

Poor Persons.

Counties were liable for the services of attorneys appointed by the court for poor persons. *Webb v. Baird*, 6 Ind. 13 (1854).

Attorneys appointed by the court to represent poor person could not be compelled to render their services without compensation. *Webb v. Baird*, 6 Ind. 13 (1854).

Courts which appointed attorneys to defend poor persons could fix the amount of the attorney's compensation. *Board of County Comm'rs v. Wood*, 35 Ind. 70 (1871); *Gordon v. Board of County Comm'rs*, 44 Ind. 475 (1873); *Gordon v. Board of County Comm'rs*, 52 Ind. 322 (1876).

Courts appointing attorneys for poor per-

Poor Persons. (Cont'd)

sons could fix their compensation. Board of County Comm'rs v. Courtney, 105 Ind. 311, 4 N.E. 896 (1886); State ex rel. Board of County Comm'rs v. Miller, 107 Ind. 39, 7 N.E. 758 (1886), overruled on other grounds, Trant v. State, 140 Ind. 414, 39 N.E. 513 (1895); Trant v. State ex rel. Bd. of County Comm'rs, 140 Ind. 414, 39 N.E. 513 (1895); State ex rel. Bd. of County Comm'rs v. Jamison, 142 Ind. 679, 42 N.E. 350 (1895); Board of County Comm'rs v. Pollard, 17 Ind. App. 470, 46 N.E. 1012 (1897).

A trial court had ample power to award counsel to defend a person charged with crime who was too poor to secure counsel to present his defense, and the discretion of a trial court in refusing to award him counsel was subject to review by the Supreme Court. Hendryx v. State, 130 Ind. 265, 29 N.E. 1131 (1892); Cross v. State, 132 Ind. 65, 31 N.E. 473 (1892).

Courts could not allow fees payable by county for attorneys for poor persons in civil actions. Board of County Comm'rs v. Pollard, 153 Ind. 371, 55 N.E. 87 (1899).

Appropriations had to be made by the county council before attorneys appointed by court could obtain judgment against a county for fees. Turner v. Board of County Comm'rs, 158 Ind. 166, 63 N.E. 210 (1902); Board of County Comm'rs v. Mowbray, 160 Ind. 10, 66 N.E. 46 (1903); Board of County Comm'rs v. McGregor, 171 Ind. 634, 87 N.E. 1, 17 Ann. Cas. 333 (1909); Board of County Comm'rs v. Knight, 44 Ind. App. 722, 85 N.E. 736 (1908).

Attorneys appointed by the court for poor persons could not be compelled to render their services without compensation. Board of County Comm'rs v. McGregor, 171 Ind. 634, 87 N.E. 1, 17 Ann. Cas. 333 (1909); Knight v. Board of County Comm'rs, 179 Ind. 568, 101 N.E. 1010 (1913).

Justices of the peace had no authority to appoint attorneys for poor persons and allow fees therefor payable by the county. Houk v. Board of County Comm'rs, 14 Ind. App. 662, 41 N.E. 1068 (1895).

Privileged Communications.

When an attorney was consulted on business within the scope of his profession the communications between him and his client were strictly confidential and the attorney could not disclose such communications without the consent of the client. Jenkinson v. State, 5 Blackf. 465 (1840); Borum v. Fouts, 15 Ind. 50 (1860); Bowers' Adm'r v. Briggs, 20 Ind. 139 (1863); Bigler v. Reyher, 43 Ind. 112 (1873).

Communications between an attorney and client should not have been disclosed without the consent of the client. George v. Hurst, 31 Ind. App. 660, 68 N.E. 1031 (1903).

As a general rule, attorneys were never

competent to testify as to confidential communications without the consent of the party making them. Fluty v. State, 224 Ind. 652, 71 N.E.2d 565 (1947).

—Communications Not Subject to Privilege.

Communications made by witnesses to a prosecuting attorney were not privileged communications. State v. VanBuskirk, 59 Ind. 384 (1877).

Communications made before the relationship of attorney-client existed were not privileged nor were those made by an agent of the client to his attorney concerning the client's business as between the agent and the attorney, and with the client's consent, the attorney could testify to them. Bingham v. Walk, 128 Ind. 164, 27 N.E. 483 (1891); Pence v. Waugh, 135 Ind. 143, 34 N.E. 860 (1893); Gurley v. Park, 135 Ind. 440, 35 N.E. 279 (1893), overruled on other grounds, 55 N.E. 1004 (Ind. 1900); Jennings v. Sturdevant, 140 Ind. 641, 40 N.E. 61 (1895); McDonald v. McDonald, 142 Ind. 55, 41 N.E. 336 (1895); Harless v. Harless, 144 Ind. 196, 41 N.E. 592 (1895); Kern v. Kern, 154 Ind. 29, 55 N.E. 1004 (1900); Lloyd v. Davis, 2 Ind. App. 170, 28 N.E. 232 (1891).

Where information concerning a woman not his client was revealed to an attorney by a male client, without authorization by the woman, and the revelation did not concern the subject matter of the relationship between the client and his attorney and would not harm or embarrass the client in any serious way, disclosure of the woman's identity would not breach the client's assurance of privilege and the attorney-client privilege could not be used to shield the woman's identity from disclosure. Colman v. Heidenreich, 269 Ind. 419, 381 N.E.2d 866, 65 Ind. Dec. 43 (1978).

—Matters of Public Record.

Where testimony of defendant's former attorney was confined to the existence, nature, and date of defendant's prior convictions, purely clerical matters documented on public record, it did not violate this section or the ethical canons of the Code of Professional Responsibility. Washington v. State, 441 N.E.2d 1355 (Ind. 1982).

—Consent to Disclosure.

Where petitioner in a coram nobis proceeding took the witness stand and testified as to his recollections concerning the confidential communications between him and his attorney, he thereby destroyed the confidential nature of the communications and consented that the attorney might be a witness concerning such confidential matters. Fluty v. State, 224 Ind. 652, 71 N.E.2d 565 (1947).

The filing of a coram nobis action attacking

Privileged Communications. (Cont'd)**—Consent to Disclosure. (Cont'd)**

the professional integrity of the attorney who defended petitioner in the criminal prosecution gave the attorney the right to defend his conduct as attorney for petitioner. *Fluty v. State*, 224 Ind. 652, 71 N.E.2d 565 (1947).

Representation of Facts.

If an attorney appeared in the chambers of the judge and presented a verified petition for a writ of prohibition he made a representation that the matters stated therein were true as far as he knew. *Trigg v. Criminal Court*, 234 Ind. 609, 130 N.E.2d 461 (1955).

Right to Represent.

An attorney could not act for a party after he had been consulted by the opposite party. *Wilson v. State*, 16 Ind. 392 (1861); *Price v. Grand Rapids & I.R.R.*, 18 Ind. 137 (1862).

If an attorney, in the general course of business, obtained knowledge of his client's affairs, he would not, for that reason, have been precluded from appearing against such client in a suit. *Price v. Grand Rapids & I.R.R.*, 18 Ind. 137 (1862).

When the interest of parties was not adverse, an attorney could have represented parties on each side of an action. *Wallace v. Furber*, 62 Ind. 103 (1878).

Collateral References. Propriety and effect of attorney representing interest adverse to that of former client. 52 A.L.R.2d 1243.

Court appointment of attorney to represent, without compensation, indigent in civil action. 52 A.L.R.4th 1063.

What constitutes negligence sufficient to render attorney liable to person other than immediate client. 61 A.L.R.4th 464.

Attorney's liability, to one other than immediate client, for negligence in connection with legal duties. 61 A.L.R.4th 615.

Attorney's misrepresentation to court of his state of health or other personal matter in seeking trial delay as ground for disciplinary action. 61 A.L.R.4th 1216.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action—modern cases. 66 A.L.R.4th 314.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in estate or probate matters as ground for disciplinary action—modern cases. 66 A.L.R.4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action — modern cases. 67 A.L.R.4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury of property damage actions as ground for disciplinary action—modern cases. 68 A.L.R.4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action—modern cases. 69 A.L.R.4th 410.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action—modern cases. 70 A.L.R.4th 786.

33-21-1-4. Authority to bind client — Authority to receive money claimed by client. — An attorney has authority, until discharged or superseded by another:

(1) To bind his client in an action or special proceeding, by his agreement, filed with the clerk, or entered upon the minutes of the court, and not otherwise.

(2) To receive money claimed by his client in an action or special proceeding, during the pendency thereof or afterwards, and, upon the payment thereof, and not otherwise, to discharge the claim, or acknowledge satisfaction of the judgment. [P.L.1-1998, § 60.]

Cross References. Group legal service plans authorized, Rule A.D. 26.

NOTES TO DECISIONS

ANALYSIS

In general.

Amicus curiae.

Appearance for infant.

Compromise.

Employment of assistants.

Evidence of authority.

Judgments and satisfaction.

Matters unconnected with employment.

Nonresident attorney.

Officer of court.

Oral agreement.

Procedure after judgment.

Procedure prior to judgment.

Recovery of compensation.

Settlement by parties.

Termination of authority.

In General.

An attorney had authority, until discharged or superseded by another, to bind his client, in an action or special proceeding, by an agreement filed with the clerk and entered upon the minutes of the court. *De Lange v. Cones*, 215 Ind. 355, 19 N.E.2d 850 (1939).

This statute authorizes an attorney to bind his client with an agreement which is either filed with the clerk or is entered upon the minutes of the court. *Bramblett v. Lee*, 162 Ind. App. 654, 320 N.E.2d 778, 45 Ind. Dec. 280, cert. denied, 424 U.S. 915, 96 S. Ct. 1115, 47 L. Ed. 2d 320 (1976).

Amicus Curiae.

An attorney who merely appeared as *amicus curiae* could not have taken a valid exception. *Campbell v. Swasey*, 12 Ind. 70 (1859); *Darlington v. Warner*, 14 Ind. 449 (1860).

Appearance for Infant.

The appearance and answer of an attorney for an infant was a nullity. *De La Hunt v. Holderbaugh*, 58 Ind. 285 (1877).

Compromise.

An attorney had no authority to compromise with a debtor or to bind his principal by any arrangement for the satisfaction of a debt placed in his hands for collection, short of an actual collection of the money. *Wakeman v. Jones*, 1 Ind. 517 (1849).

An attorney had no general authority to compromise the claims of his clients. *Wakeman v. Jones*, 1 Ind. 517 (1849); *Union Mut. Life Ins. Co. v. Buchanan*, 100 Ind. 63 (1885); *Repp v. Wiles*, 3 Ind. App. 167, 29 N.E. 441 (1891); *Miedreich v. Rank*, 40 Ind. App. 393, 82 N.E. 117 (1907).

An attorney had no general authority to compromise a claim and it was only in cases of emergency, where the interests of the client

reasonably appeared to be in jeopardy if the action was deferred, that an attorney was justified in departing from his usual and general line of duty. *Repp v. Wiles*, 3 Ind. App. 167, 29 N.E. 441 (1891); *Biddle v. Pierce*, 13 Ind. App. 239, 41 N.E. 475 (1895); *Hammond v. Evans*, 23 Ind. App. 501, 55 N.E. 784 (1899).

The attorney for a party plaintiff was presumed, until the contrary was shown, to bind his client in settlement and where an agreement of compromise was signed by him, upon which a judgment was rendered, the judgment was not open to collateral attack, although the client was not personally present when the compromise was agreed to. *Biddle v. Pierce*, 13 Ind. App. 239, 41 N.E. 475 (1895).

Employment of Assistants.

Where plaintiff's claim was for legal services alleged to have been rendered for a client, and such services were rendered at the request of an attorney who was not recognized or employed by the alleged client, as his attorney, there could be no recovery, for an attorney must first have been employed himself before he could, by the procurement of assistant counsel, bind or pledge the credit of another for the payment of assistant counsel. *Brown v. Underhill*, 4 Ind. App. 77, 30 N.E. 430 (1892); *Moore v. Orr*, 10 Ind. App. 89, 37 N.E. 554 (1894).

An attorney had power to employ stenographer at trial at expense of client. *Palmer v. Miller*, 19 Ind. App. 624, 49 N.E. 975 (1898); *Miller v. Palmer*, 25 Ind. App. 357, 58 N.E. 213, 81 Am. St. R. 107 (1900).

An attorney had, by virtue of his employment in a cause, such power to agree to the entry of a judgment, that his client would be bound thereby, and if in doing so, he violated instructions, he would be responsible to the client. *Thompson v. Pershing*, 86 Ind. 303 (1882); *Devenbaugh v. Nifer*, 3 Ind. App. 379, 29 N.E. 923 (1892).

Evidence of Authority.

An attorney, without special authority, could not bind his client by receiving as collateral security and agreeing to collect a claim against a third person. *Holliday v. Thomas*, 90 Ind. 398 (1883).

Authority of attorney could have been recognized by acts of client without express employment. *Newman v. Kiser*, 128 Ind. 258, 26 N.E. 1006 (1891); *Moore v. Orr*, 10 Ind. App. 89, 37 N.E. 554 (1894).

An appearance by an attorney was *prima facie* evidence of his authority to appear. *Castle v. Bell*, 145 Ind. 8, 44 N.E. 2 (1896); *Godfrey v. White*, 32 Ind. App. 265, 69 N.E. 688 (1904).

Judgments and Satisfaction.

An attorney to whom a claim had been sent for collection and who obtained a judgment could not, without permission of the owner of the claim, have received, by way of compromise, notes of a third person in satisfaction of the judgment. *Jones v. Ransom*, 3 Ind. 327 (1852).

Before a judgment could be rendered against a person on the agreement of his attorney, where the person did not personally appear, and had not been personally summoned, the attorney had to produce and prove written authority from his client to consent to such judgment. *Jarrett v. Andrews*, 19 Ind. 403 (1862); *Hudson v. Allison*, 54 Ind. 215 (1876).

Attorneys had power to control executions issued in favor of their clients. *State ex rel. Share v. Boyd*, 63 Ind. 428 (1878).

A receipt executed by an attorney on a judgment or execution was not binding on his client when no money was received. *McCormick v. Walter A. Wood Mowing & Reaping Mach. Co.*, 72 Ind. 518 (1880).

Attorneys could receive money paid on judgments in favor of their clients and enter satisfaction thereof on record. *Newman v. Kiser*, 128 Ind. 258, 26 N.E. 1006 (1891); *State v. Henning*, 158 Ind. 196, 63 N.E. 207 (1902).

An attorney having taken a check in course of his employment had implied authority to make formal indorsement in behalf of his client for the purpose of making collection and receiving the money. *Brown v. Grimes*, 74 Ind. App. 655, 129 N.E. 483 (1921).

Matters Unconnected With Employment.

An attorney could not, without special authority, have bound his client in matters not connected with the litigation in which he was employed. *Osborn v. Storms*, 65 Ind. 321 (1879).

Nonresident Attorney.

In an action for the appointment of a receiver, where no summons was issued or publication made against the defendant, an answer written and filed by plaintiff's attorney, signed by a nonresident attorney who was not admitted to practice law in the court where the proceeding was pending, purporting to appear for the defendant to the action, did not constitute a legal appearance and the proceeding was void. *State v. Union Nat'l Bank*, 145 Ind. 537, 44 N.E. 585, 57 Am. St. R. 209 (1896).

Officer of Court.

An attorney was an officer of the court, and should have been protected by the court. *Whinery v. Hammond Trust & Sav. Bank*, 80 Ind. App. 282, 140 N.E. 451 (1923).

Oral Agreement.

An oral agreement between counsel not entered of record is not binding upon the clients nor the court. *Hawkins v. Hawkins*, 160 Ind. App. 5, 309 N.E.2d 177, 41 Ind. Dec. 396 (1974).

Procedure After Judgment.

An attorney could not by agreement have extended the time in which an appeal may have been taken. *Louisville, N.A. & C.R.R. v. Boland*, 70 Ind. 595 (1879).

An attorney could not verbally extend the time fixed by the court for filing a bill of exceptions. *Goben v. Goldsberry*, 72 Ind. 44 (1880).

An attorney could not extend the time given by statute for filing a motion for a new trial. *American White Bronze Co. v. Clark*, 123 Ind. 230, 23 N.E. 855 (1890); *Evansville & R.R. v. Maddux*, 134 Ind. 571, 33 N.E. 345, 34 N.E. 511 (1893); *Talbot v. Meyer*, 183 Ind. 585, 109 N.E. 841 (1915).

An attorney could bind his client by an agreement entered of record that proceedings have been had in a cause which were not shown by the record. *Garrigan v. Dickey*, 1 Ind. App. 421, 27 N.E. 713 (1891).

Procedure Prior to Judgment.

An attorney could have entered a retraxit in a cause. *Barnard v. Daggett*, 68 Ind. 305 (1879).

Admissions made by an attorney on a trial would not have bound the client on a subsequent trial. *West v. Cavins*, 74 Ind. 265 (1881).

An attorney represented his client in all matters relating to the mode of procedure, and he could bind his client in regard to the manner of trial, whether by jury or by the court, by his agreement in open court entered upon the minutes of the court. *Whitestown Milling Co. v. Zahn*, 9 Ind. App. 270, 36 N.E. 653 (1894).

Attorneys could bind their clients by agreements not to take a change of venue. *Terre Haute Brewing Co. v. Ward*, 56 Ind. App. 155, 102 N.E. 395, 105 N.E. 58 (1914); *Fort Wayne Checker Cab Co. v. Davis*, 90 Ind. App. 30, 165 N.E. 764, 168 N.E. 41 (1929).

The attorney of a person had no authority to verify the objections made by such person to the probate of a will. *Faylor v. Fehler*, 181 Ind. 441, 104 N.E. 22 (1914).

Failure to file an agreement made in open court, under this section, not to ask for a change of venue, if a continuance was granted, did not avoid the force of the agreement. *Fort Wayne Checker Cab Co. v. Davis*, 90 Ind. App. 30, 165 N.E. 764, 168 N.E. 41 (1929).

Recovery of Compensation.

In an action by attorneys against a county

Recovery of Compensation. (Cont'd)

clerk to recover fees for services for securing a judgment which was paid to the sheriff and turned over to the clerk, the complaint was held to be drawn on the theory of enforcing plaintiff's rights as the holder of a statutory lien, so that its sufficiency had to be determined regardless of any rights plaintiffs might have had to demand and receive the money from the clerk for their client under this section. *State ex rel. Mock v. Bleeke*, 71 Ind. App. 23, 116 N.E. 2 (1919).

Settlement by Parties.

Parties could settle their controversies out of court without the consent of their attorneys, but, in so doing, they could not deprive their attorneys of any of their just rights. *Miedreich v. Rank*, 40 Ind. App. 393, 82 N.E. 117 (1907).

Collateral References. Authority of attorney to compromise suit. 30 A.L.R.2d 944.

Authority of attorney to indorse and transfer commercial paper. 37 A.L.R.2d 453.

Attorney's liability for compromise or settlement or dropping or otherwise terminating action. 45 A.L.R.2d 5.

Attorney's liability for failure to follow client's instructions in preparing or conducting litigation. 45 A.L.R.2d 5.

33-21-1-5. Written authority required for entry of certain judgments. — No judgment shall be rendered against any party upon the agreement of an attorney, nor any judgment by default, where the party has not been notified, or personally entered his appearance, unless the written authority of the party be first produced, and its execution proved to the satisfaction of the court. [P.L.1-1998, § 60.]

Cross References. Confession of judgment by attorney, IC 34-54-2-3.

NOTES TO DECISIONS**In General.**

If the defendants were legally notified of the pendency of the action, the written authority of their attorney was not needed to be produced to enable him to act, but if they had not been notified, and judgment was rendered against them on the agreement of their attorney, they should have applied to the court below for relief from the judgment and if denied them, on a proper case made, this court could have been asked to determine the rights of the parties. *Dougherty v. Andrews*, 19 Ind. 406 (1862).

Relief by a defendant against a judgment obtained through the unauthorized appear-

Termination of Authority.

Death of the client terminated the authority of the attorney. *Rundles v. Jones*, 3 Ind. 35 (1851); *Harness v. State ex rel. Platt*, 57 Ind. 1 (1877).

The general authority of an attorney for the defendant ceased with the entry of judgment in the cause. *Hillegass v. Bender*, 78 Ind. 225 (1881); *Test v. Larsh*, 98 Ind. 301 (1884).

In condemnation proceedings, the attorney for the property-owner had no authority to receive the damages assessed and bind his clients thereby as the general power of an attorney for defendant ceased upon entry of final judgment. *Test v. Larsh*, 98 Ind. 301 (1884).

Insanity of a client terminated the authority of an attorney. *Chase v. Chase*, 163 Ind. 178, 71 N.E. 485 (1904).

Liability of attorney drawing invalid will to beneficiary named therein. 65 A.L.R.2d 1363.

Legal malpractice in connection with attorney's withdrawal as counsel. 6 A.L.R.4th 342.

Authority of attorney to compromise action — modern cases. 90 A.L.R.4th 326.

Ratification of attorney's unauthorized compromise of action. 5 A.L.R.5th 56.

Legal malpractice: Negligence or fault of client as defense. 10 A.L.R.5th 828.

ance of an attorney should have been sought in the original cause by way of an application therein for a stay of proceedings and a bearing upon the merits, and not by way of a collateral proceeding for injunction. *Hollinger v. Reeme*, 138 Ind. 363, 36 N.E. 1114, 24 L.R.A. 46, 46 Am. St. R. 402 (1894).

In an action to determine the priority of a judgment on a promissory note which contained a clause of power of attorney to confess judgment it was not error to permit proof by the attorney who confessed judgment, that he possessed no authority not contained in the note; a court had no authority, however, to render judgment by confession, unless in the

In General. (Cont'd)

manner provided by statute, the production of an affidavit being essential and without

which the judgment was erroneous. *Bible v. Voris*, 141 Ind. 569, 40 N.E. 670 (1895).

33-21-1-6. Requirement to produce authority. — The court or judge may, on motion of either party, and on showing reasonable ground therefor, or without such motion, require an attorney to produce and prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear. [P.L.1-1998, § 60.]

NOTES TO DECISIONS

ANALYSIS

In general.

Appearance.

Discretion of trial court.

In General.

If an attorney who was ruled to produce his authority to bring a suit, filed the affidavit of the plaintiff's agent that he was directed by the plaintiff to cause suit to be brought and that he employed the attorney in pursuance of such direction, the showing of authority was sufficient. *Hughes v. Osborn*, 42 Ind. 450 (1873).

The right of an attorney to appear must have been questioned before beginning of the trial. *Indiana, B. & W.R.R. v. Maddy*, 103 Ind. 200, 2 N.E. 574 (1885).

The appearance of an attorney for a litigant was prima facie evidence of the authority of the attorney to appear. *Castle v. Bell*, 145 Ind. 8, 44 N.E. 2 (1896).

Where industrial board failed to require attorneys for claimants to produce and proved the authority under which they acted and failed to find that they were not authorized to act for claimants, it would have been presumed by the reviewing court that the attorneys who represented the claimants before the board were authorized to act in such capacity. *Sadowski v. Hubbard Steel Foundry Co.*, 100 Ind. App. 233, 193 N.E. 676 (1935).

Where, after an adjudication by a juvenile court that minor children were dependent and neglected and the making of orders placing them in a foster home under the supervision of the welfare department and providing for their support, the mother and children fled the jurisdiction of the court, the court had reasonable grounds to justify its action in questioning the authority of the mother's attorney who appeared thereafter in the case and to order a stay of further proceedings until he proved his authority, and hence the court's refusal to permit the attorney to file motions for new trial until such authority was produced was justified. *State ex rel. Miller v. Gannon*, 117 App. 677, 75 N.E.2d 678 (1947).

Appearance.

In a proceeding to appoint a guardian, the appearance of attorneys constituted a prima facie showing of authority. *State ex rel. Koch v. Vanderburgh Probate Court*, 246 Ind. 139, 203 N.E.2d 525, 4 Ind. Dec. 400 (1965).

Discretion of Trial Court.

This section gives a trial court discretion in requiring an attorney to produce the authority under which he appears. *Custard v. City of S. Bend*, 423 N.E.2d 712 (Ind. App. 1981), cert. denied, 456 U.S. 991, 102 S. Ct. 2272, 73 L. Ed. 2d 1286 (1982).

33-21-1-7. Appearance for party without authority. — If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve such party from the consequences of the attorney's act. It may, also, summarily, upon motion, compel the attorney to repair the injury consequent upon his assumption of authority. [P.L.1-1998, § 60.]

NOTES TO DECISIONS

Appearance Without Authority.

The appearance by an attorney without

authority was no cause for proceedings in review of judgment. *Floyd County Agric. &*

Appearance Without Authority. (Cont'd)
Mechanical Ass'n v. Tompkins, 23 Ind. 348 (1864); *Wiley v. Pratt*, 23 Ind. 628 (1864).

An appearance, although unauthorized, was binding upon the party until set aside. *Bush v. Bush*, 46 Ind. 70 (1874).

Where an attorney appeared without au-

thority and judgment was taken by default, the defendant could have appeared and set up a defense. *Coon v. Welborn*, 83 Ind. 230 (1882); *Hollinger v. Reeme*, 138 Ind. 363, 36 N.E. 1114, 24 L.R.A. 46, 46 Am. St. R. 402 (1894).

33-21-1-8. Deceit or collusion with intent to deceive a court or judge or party — Penalties. — An attorney who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or judicial proceeding, commits a Class B misdemeanor, and he shall also forfeit to the party injured treble damages, recoverable in a civil action. [P.L.1-1998, § 60.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

NOTES TO DECISIONS

ANALYSIS

In general.

Abuse of process.

Action for attorney deceit.

Damages.

Question of fact.

Representation of facts.

Statute of limitations.

In General.

If an attorney misled his client, who was relying on him, by fraudulent concealment of material facts, the transaction would have been annulled by the courts. *McLead v. Applegate*, 127 Ind. 349, 26 N.E. 830 (1891); *Manley v. Felty*, 146 Ind. 194, 45 N.E. 74 (1896).

In a criminal proceeding wherein a temporary writ of prohibition was secured from the Supreme Court based on representations contained in petition on which the name of counsel appeared and subsequent events proved that certain representations were false the temporary writ was secured by fraud on the court and temporary writ was vacated. *Trigg v. Criminal Court*, 234 Ind. 609, 130 N.E.2d 461 (1955).

Damages for breach of duty of attorney, as counter-claim in suit for fees, could have been recovered. *O'Halloran v. Marshall*, 8 Ind. App. 394, 35 N.E. 926 (1893).

An attorney was not liable for instituting any lawful proceedings to enforce the legal claims of his clients. *Whitesell v. Study*, 37 Ind. App. 429, 76 N.E. 1010 (1906).

The execution of a contingent fee contract in a divorce case in accordance with bar association standards, which was lawful at time it was executed, did not allow finding an intent to deceive. *Barelli v. Levin*, 480 F.2d 1207 (7th Cir. 1973).

This section does not create a new cause of action. *Anderson v. Anderson*, 73 Ind. Dec. 375, 399 N.E.2d 391 (1979).

This section affords no remedy to plaintiff in previous action against the attorneys for defendant in such previous action unless there is some showing of fraud, collusion, malicious or tortious conduct on their part toward such plaintiff. *Meier v. Pearlman*, 74 Ind. Dec. 252, 401 N.E.2d 31 (1980), cert. denied, 449 U.S. 1128, 101 S. Ct. 948, 67 L. Ed. 2d 115 (1981).

This section does not create a new cause of action, but rather provides treble damages for actions based on the common-law action of deceit. *Seevers v. Arkenberg*, 726 F. Supp. 1159 (S.D. Ind. 1989).

Abuse of Process.

A case for abuse of process sufficient to survive summary judgment was made, where lawyers representing a personal injury plaintiff pursued a second *lis pendens* which caused the sale of defendants' real property to collapse, after a trial court had ruled lawyers were not entitled to file *lis pendens* and had ordered a prior notice removed. *National City Bank v. Shortridge*, 689 N.E.2d 1248 (Ind. 1997).

Action for Attorney Deceit.

Where settlement agreement was not incorporated in decree of dissolution of marriage nor was any mention of property settlement made in decree, action for attorney deceit in drafting settlement agreement was premature since damages could not be determined until a property disposition was entered by the dissolution court. *Anderson v. Anderson*, 73 Ind. Dec. 375, 399 N.E.2d 391 (1979).

An action for attorney deceit pursuant to

Action for Attorney Deceit. (Cont'd)
this section is founded on the common-law action of deceit and requires an intent to deceive. *Anderson v. Anderson*, 73 Ind. Dec. 375, 399 N.E.2d 391 (1979).

Damages.

Attorney who was found guilty of attorney misconduct in disciplinary proceeding was not liable to his former client for treble and punitive damages where the client's complaint did not allege elements necessary for civil fraud and did not allege and prove that the attorney was convicted of criminal fraud. *Finney v. Relphorde*, 612 N.E.2d 191 (Ind. App. 1993).

Question of Fact.

The question of whether an attorney had the right to rely upon insurance company's claims manager's misrepresentations of policy limits was a question of fact for the jury to

decide. *Fire Ins. Exch. v. Bell*, 634 N.E.2d 517 (Ind. App. 1994), aff'd in part and vacated in part on other grounds, 643 N.E.2d 310 (Ind. 1994).

Representation of Facts.

If an attorney appeared in the chambers of the judge and presented a verified petition for a writ of prohibition he made a representation that the matters stated therein were true as far as he knew. *Trigg v. Criminal Court*, 234 Ind. 609, 130 N.E.2d 461 (1955).

Statute of Limitations.

Although attorney malpractice claims are analogous to attorney deceit claims, the nature of an attorney deceit claim most closely resembles an action for fraud. Therefore, the appropriate statute of limitations is that applicable to fraud, which is six years. *Seevers v. Arkenberg*, 726 F. Supp. 1159 (S.D. Ind. 1989).

Collateral References. Attorney's splitting fees with other attorney or layman as ground for disciplinary proceeding. 6 A.L.R.3d 1446.

Participation in allegedly collusive or connived divorce proceedings as subjecting attorney to disciplinary action. 13 A.L.R.3d 1010.

What constitutes representation of conflict-

ing interests subjecting attorney to disciplinary action. 17 A.L.R.3d 835.

Communication with party represented by counsel as ground for disciplining attorney. 26 A.L.R.4th 102.

Attorney's liability under state law for opposing party's counsel fees. 56 A.L.R.4th 486.

33-21-1-9. Refusal to deliver money or papers. — When an attorney, on request, refuses to deliver over money or papers to a person from whom or for whom he has received them, in the course of his professional employment, whether in an action or not, he may be required, after reasonable notice, on motion of any party aggrieved, by an order of the court in which an action, if any, was prosecuted or if no action was prosecuted, then by the order of any court of record, to do so, within a specified time, or show cause why he should not be punished for contempt. [P.L.1-1998, § 60.]

Res Gestae. Attorneys and Their Ethics, 21 Res Gestae 528.

NOTES TO DECISIONS

ANALYSIS

In general.
Demand.
Disbarment.
Divorce action, suit money.
Embezzlement.
Jurisdiction of action.
Liens.
Motion to compel production.
Notice of collection.
Right to retain fees.

In General.

The charges hereunder must have been definite, and contained a specific statement of the facts relied upon for punishment. *Reilly v. Cavanaugh*, 32 Ind. 214 (1869).

This section contemplated a special proceeding by notice and motion; the proceeding could not be had as merely ancillary to an action for debt. *Heffren v. Jayne*, 39 Ind. 463, 13 Am. R. 281 (1872).

The filing of a motion pursuant to this section was a special statutory proceeding

In General. (Cont'd)

and in order to invoke its provisions the jurisdictional facts required by this section had to be shown. *State ex rel. Shannon v. Hendricks Circuit Court*, 243 Ind. 134, 183 N.E.2d 331 (1962).

Courts had summary jurisdiction to order the payment of money wrongfully withheld from clients. *Durre v. Sturgeon*, 69 Ind. App. 500, 122 N.E. 341 (1919).

Demand.

In actions against attorneys for money collected and not paid over to their clients, a demand had to be averred and proven, or circumstances which excused it. *Claypool v. Gish*, 108 Ind. 424, 9 N.E. 382 (1886); *Whinery v. Brown*, 36 Ind. App. 276, 75 N.E. 605 (1905).

An attorney was liable on demand to pay over money received by him for his client. *Spencer v. Smith*, 45 Ind. App. 17, 87 N.E. 154 (1909).

Disbarment.

The refusal of an attorney to pay over money collected was not, per se, a cause for disbarment or suspension. *Heffren v. Jayne*, 39 Ind. 463, 13 Am. R. 281 (1872).

Divorce Action, Suit Money.

Where an attorney who was cited for contempt of court, for failure to pay into court in a divorce suit certain money paid to him by the defendant, to be used for support of plaintiff pending suit, appeared in the proceeding and offered evidence, it was defendant's duty, if he reasonably believed that the time given by the court for payment of the money was unreasonably short, to ask the court for further time before entering upon the hearing. *Lane v. Campbell*, 214 Ind. 376, 14 N.E.2d 552 (1938).

Where the defendant, in a divorce case, paid a sum of money to his attorney to be applied to suit money, etc., in such case, for his wife, and the court ordered such money to be paid by the attorney to the clerk of the court, to be used for such purpose, within a stated time, on failure of the attorney to pay the money as ordered, the defendant, could institute contempt proceedings either by motion or petition against the attorney for such failure. *Lane v. Campbell*, 214 Ind. 376, 14 N.E.2d 552 (1938).

Embezzlement.

An affidavit and information charging that defendant, being an attorney, converted to his own use the proceeds of certain certificates of deposit given him by his client to be cashed and applied on a certain judgment, charged the crime of embezzlement within the provisions of the statute under which it was not

necessary to allege or prove a demand. *Dean v. State*, 147 Ind. 215, 46 N.E. 528 (1897).

Jurisdiction of Action.

In an action brought in the Marion circuit court by the brother of a client of defendant, for refusal of the attorney to deliver over money received for use in connection with a cause prosecuted in the circuit court of another county by defendant as attorney for the brother, the Marion circuit court had no jurisdiction over defendant jurisdiction having been in the circuit court of the other county. *King v. Yundt*, 209 Ind. 412, 199 N.E. 236 (1936).

Liens.

This section did not attempt to cover the question of liens upon funds secured by the client through the aid of his employed attorney and by other steps than a judgment. *State ex rel. Shannon v. Hendricks Circuit Court*, 243 Ind. 134, 183 N.E.2d 331 (1962).

This statute did not contemplate that an attorney could have been cited for contempt of court for failure to pay over to his client moneys upon which he was retaining a lien for his legal services. *State ex rel. Shannon v. Hendricks Circuit Court*, 243 Ind. 134, 183 N.E.2d 331 (1962).

The rule was well established in Indiana that the statutory lien was not the only lien available for the security of an attorney in performing services beneficial to his client, but that equity supplied a lien independent of statute. *State ex rel. Shannon v. Hendricks Circuit Court*, 243 Ind. 134, 183 N.E.2d 331 (1962).

Motion to Compel Production.

The granting of a motion to compel the production of documents which an attorney has received for a client in the course of his employment is not discretionary with the trial court. Upon motion by the party represented, the trial court shall require an attorney to deliver all papers he obtained pertaining to the representation to which the client is entitled, and nothing within the language of this section indicates that the delivery of such documents is conditioned upon the pre-payment of any expenses which may be associated with preparing, copying, and mailing them to the client. *McKim v. State*, 528 N.E.2d 484 (Ind. App. 1988).

Notice of Collection.

It was the duty of an attorney who had collected money for his client to give the latter notice of such fact within a reasonable time. *Spencer v. Smith*, 45 Ind. App. 17, 87 N.E. 154 (1909).

Right to Retain Fees.

Relator attorney had a right to retain his

Right to Retain Fees. (Cont'd)

fees out of moneys which he received from the commissioners for the sale of real estate as his client's share of the property settlement which had been recovered by his aid and

through his efforts as her attorney in a divorce action. State ex rel. Shannon v. Hendricks Circuit Court, 243 Ind. 134, 183 N.E.2d 331 (1962).

33-21-1-10. Suspension of attorney for cases under IC 33-21-1-9. —

In cases contemplated in section 9 [IC 33-21-1-9] of this chapter, on such motion, or in an action brought by the party aggrieved, the court may suspend the attorney from practice in any of the courts of this state, for any length of time, in its discretion; judgment may also be rendered for the amount of money withheld, deducting fees, if any are due, and costs paid by the attorney, with ten percent (10%) damages, which may be enforced by execution, without the benefit of stay or appraisal laws, and returnable within thirty (30) days. The court may also render any judgment and make any order respecting papers or property withheld, that may be necessary to enforce the right of the party aggrieved, subject to any liens the attorney may have thereon for fees. [P.L.1-1998, § 60.]

Compiler's Notes. Such parts of this section as are inconsistent with Rule A.D. 23 are superseded by that rule.

Cross References. Valuation and appraisal laws, IC 34-55-10.

NOTES TO DECISIONS**In General.**

In a proper case, an attorney could have been suspended and a money judgment also rendered. Reilly v. Cavanaugh, 32 Ind. 214 (1869).

In an action solely for the recovery of money collected, a judgment suspending an attorney from practice could not have been rendered. Heffren v. Jayne, 39 Ind. 463, 13 Am. R. 281 (1872).

CHAPTER 2**PROHIBITION ON PRACTICING LAW BY NONATTORNEYS****SECTION.**

33-21-2-1. Practice of law by nonattorney prohibited.

33-21-2-1. Practice of law by nonattorney prohibited. — The practice of law by a person who is not an attorney is prohibited under IC 33-1-5. [P.L.1-1998, § 60.]

CHAPTER 3**PROHIBITION ON SOLICITATION BY NONATTORNEYS****SECTION.**

33-21-3-1. Solicitation by nonattorney prohibited.

33-21-3-1. Solicitation by nonattorney prohibited. — Soliciting another person to bring an action for damages by a person who is not an attorney is prohibited under IC 35-45-14. [P.L.1-1998, § 60.]

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- Generally. See within this heading,
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